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HOUSE OF REPRESENTATIVES

REPORT
98-1048

FOSTER CARE ASSISTANCE; SSI AMENDMENTS

SEPTEMBER 24, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 6266]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6266) to extend for one year certain provisions (presently scheduled to expire in 1984) relating to foster care assistance under part E of title IV of the Social Security Act, and to require the establishment or continuation of regional Child Welfare Resource Centers to assist in the implementation of child welfare, foster care, and adoption assistance programs, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

The title of the bill is amended to reflect the amendment to the text of the bill.

I. SUMMARY OF PROVISIONS

CHILD WELFARE AND FOSTER CARE AMENDMENTS

1. Foster care maintenance payments for children voluntarily placed in foster care (section 101)

Section 101 provides for a one year extension beyond September 30, 1984 of the authority for States to claim Federal matching funds for children who are placed in foster care under a voluntary placement agreement between the agency and a child's parents.

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2. One year extension of state option to use foster care assistance for child welfare services in certain cases (section 102)

Section 102 provides for a one year extension of the provision expiring on September 30, 1984 that allows States to transfer funds allocated to them for foster care under Title IV-E to use for child welfare services under Title IV-B of the Social Security Act.

3. Child welfare resource centers (section 103)

Section 103 requires the Secretary of HHS to fund in fiscal year 1986 a network of Child Welfare Resource Centers to provide assistance to States and other organizations and agencies in implementing the provisions of the Adoption Assistance and Child Welfare Amendments of 1980.

SSI AMENDMENTS

Part 1—Treatment of Income

1. Exclusion of certain real and personal property from income (section 201)

Section 201 provides for excluding from countable income certain unearned income received in the form of real or personal property which would not be counted as a resource in the following month.

2. Exclusion of interest and dividends from income (section 202)

Section 202 provides that interest and dividend income received by an SSI recipient on countable resources which are within the SSI resource limits would not be counted as income under the SSI program.

3. Exclusion of certain temporary income in retrospective budgeting (section 203)

Section 203 requires that temporary non-recurring income received by applicants for SSI may not be counted more than once under the retrospective budgeting process. This provision must be implemented no later than October 1, 1985.

4. Exclusion of reparations received by holocaust survivors (section 204)

Section 204 excludes from income payments received under the reparations laws of the West German and East German governments by holocaust survivors.

Part 2—Treatment of Resources

5. Modification of penalties where assets are transferred at less than fair market value (section 211)

Current law provides a two year delay in eligibility for SSI benefits when resources are transferred at less than fair market value in order to qualify for benefits. This provision is modified by Section 211 to give the Secretary of HHS the authority to waive the denial of benefits to the extent determined necessary to avoid undue hardship.

6. Computation of vehicle value in assets test (section 212)

Section 212 provides that in determining whether an individual or couple meets the countable resources test, there shall be excluded one automobile.

Part 3—Determination of Benefit Amounts

7. Changes in one-third reduction formula (section 221)

Section 221 modifies the assumptions to be used in determining whether or not an SSI applicant is receiving in-kind assistance when living with others in such a way as to protect SSI applicants from an automatic ⅓ reduction in their initial Federal SSI benefit if at the time of application they are living with a relatively low income household.

8. Increases in benefit standard for institutionalized recipients (section 222)

Section 222 increases the current $25 a month SSI benefit standard for residents of Medicaid facilities to $35, effective January 1, 1985. The committee directs the Department of Health and Human Services to take steps to assure that the full $35 SSI payment to persons in medical institutions will accrue to their personal benefit, and will not be subject to misuse by the operators of these institutions, or be used by States to lower Medicaid reimbursement rates to such institutions.

Part 4—Provisions Relating to Eligibility

9. Eligibility for benefits due deceased recipients (section 231)

Section 231 provides for payment of retroactive benefits on behalf of a deceased recipient to the ineligible spouse and the parent of a disabled or blind child. Present law provides that only an eligible spouse may receive the retroactive payment that was due a deceased SSI recipient.

10. Modification of certain filing requirements (section 232)

Section 232 provides that certain SSI applicant or recipients (those disabled widow/ers who at age 60 qualify for reduced title II benefits) will not be required to file for title II benefits, if receipt of such benefits would disadvantage the individual, i.e. loss of eligibility for SSI and subsequently health services under Medicaid.

11. Eligibility of couples living apart (section 233)

Section 233 reduces from six months to three months the time that an SSI individual and an eligible spouse must be living apart before they will be treated as individuals for determining eligibility for the amount of SSI benefits.

Part 5—Overpayments, Emergency Payments and Interim Assistance

12. Extension of interim assistance program (section 241)

Section 241 expands the interim assistance program to include payment of the appropriate amount of retroactive SSI funds to the State, when the State has provided financial assistance to SSI re-

cipients who have appealed a termination or suspension of benefits, subsequently won the appeal, and have qualified for retroactive SSI benefits. The provision must be implemented no later than October 1, 1985.

13. Study of alternative methods of promoting compliance with standards for group living facilities (section 242)

Present law requires that Federal SSI payments be reduced dollar-for-dollar for any payments made by a State to provide medical or remedial care on behalf of an SSI recipient who is in an institution that is not approved as meeting relevant State standards. The committee's provision directs HHS and GAO to analyze alternatives to current law and report findings by July 1, 1985.

14. Presumptively eligible individuals (section 243)

Section 243 provides that emergency advance payments which can be paid directly by a Social Security district office to those in need of immediate subsistence income bill be increased from a maximum of $100 to a maximum of 1 month's payment of SSI benefits.

15. Notice to recipient regarding overpayments (section 244)

Section 244 requires that when an individual has been overpaid, the Secretary must send the person a notice which contains, in simple language, the following information: the precise amount of the overpayment, the months in which the overpayment occurred; the reason the overpayment occurred; a statement of the manner in which, and the rate at which, the overpayment is proposed to be recovered; a complete statement of the indivdual's right to seek reconsideration of the finding that overpayment occurred; the right to seek waiver of repayment; and notice that if waiver or reconsideration is sought, payment of full benefits will continue until a decision is made.

Part 6—Study of Extension of SSI Program

16. Study of extension of program to Puerto Rico, the Virgin Islands, Guam and American Samoa (section 251)

The Department of Health and Human Services is required to conduct a study of the feasibility and cost of the extension of SSI to residents of Puerto Rico, the Virgin islands, Guam, and American Samoa. In addition, the General Accounting Office is required to study the overall effect of extending the Federal and corporate income tax laws to these jurisdictions, and at the same time treating these jurisdictions as States for purposes of major benefit programs.

Part 7—Other Provisions

17. Extension of outreach efforts (section 261)

Section 261 requires HHS to establish and conduct an ongoing SSI outreach effort.

18. Requirement of increased clarity and readibility for written materials to be used by SSI applicants or recipients (section 262)

Section 262 requires that HHS take action to increase the clarity and readability of written materials to be used by SSI applicants or recipients. The amendment also requires SSA to contract with recognized experts to review current and future notices to determine if they are readily understandable by the SSI population, except to the extent it is determined not to be feasible. The objectives of simplicity and readibility should not be permitted to override concerns for completeness, accuracy, or legal sufficiency.

19. Notice to blind SSI recipients (section 263)

Section 263 requires the Secretary of Health and Human Services to provide SSI recipients who are blind with the option of receiving special notice of official actions which may affect their SSI benefit rights. The SSI recipient will be provided the option to receive a supplementary notice of any action by SSA by telephone or to receive the initial notice by certified letter. the Secretary must attempt to provide all blind SSI recipients with the option to receive this suppplementary notification within at least one year after the bill is enacted.

It also requires the Secretary to conduct a study to determine the feasibility of providing supplementary notification rights to individuals who may have difficulty in reading printed notices. These individuals may include the mentally impaired and persons for whom English is a second language.

20. General effective date (section 264)

Except as otherwise specifically provided, the provisions of title II are effective January 1, 1985.

II. Section-by-Section Explanation

TITLE I—CHILD WELFARE AND FOSTER CARE AMENDMENTS

Sec. 101. Foster care maintenance payments for children voluntarily placed in foster care

Present law.—Present law provides authority until September 30, 1984, for States to claim Federal matching funds for children who are placed in foster care under a voluntary placement agreement between the agency and a child's parents.

Prior to the enactment of the Adoption Assistance and Child Welfare Amendments of 1980 (P.L. 96-272), eligibility for Federal foster care matching funds provided to States was limited to the cost of care for children removed from their home as a result of a judicial determination that continuance in the home would be contrary to the child's welfare. In the development of P.L. 96-272 it was found that in some cases the parents have specifically asked that their child be placed in foster care. This may involve handicapped children or where, because of severe emotional problems of the child, the parents have requested assistance and agree to placement of the child in foster care so that the child can receive treatment services. Current law requires that for federal matching funds to continue beyond six months, there would have to be a ju-

dicial determination before the end of the six month period that continued placement outside the home is in the best interest of the child.

Committee bill.—Section 1 provides for a one year extension beyond September 30, 1984 of the authority for States to claim Federal matching funds for children who are placed in foster care under a voluntary placement agreement between the agency and a child's parents.

Sec. 102. One year extension of State option to the foster care assistance for child welfare services in certain cases

Present law.—Present law, which expires on September 30, 1984, allows States to transfer funds allocated to them for foster care under title IV-E to use for child welfare services under title IV-B of the Social Security Act.

The intent of this option for the States is to encourage States to redirect their efforts toward lessening dependence on foster care as a means of protecting children and to encourae the use of federal funds for preventive services and family renunification services. As under present law, the authority for a state to transfer funds from its foster care allocation is dependent on there being either (1) a mandatory state-by-state ceiling for federal foster care which results from a certain level of appropriation for child welfare services under Title IV-B, or (2) if the mandatory ceiling is not triggered by IV-B appropriations, the election by a State of a voluntary foster care ceiling. In fiscal year 1984, approximately $40 million will be transferred by States from their foster care allocation to use for child welfare services. Therefore, this has become a significant source of funding for child welfare services for the states.

These two provisions also are a part of the financial incentives included in the 1980 child welfare and foster care legislation which was intended to assist and encourage states to implement a comprehensive set of services, procedures and safeguards designed to improve services to children and families. Under current law, and as it would be continued under this provision a State could only claim matching funds for children placed in foster care under voluntary placement agreements or transfer Title IV-E foster care funds to child welfare services if that state had implemented these required services and procedures.

Committee bill.—Section 102 provides for a one year extension of the provision expiring on September 30, 1984 that allows States to transfer funds allocated to them for foster care under Title IV-E to use for child welfare services under Title IV-B of the Social Security Act.

Sec. 103. Child welfare resource centers

Present law.—At the present time there is one Regional Child Welfare Resource Center in each federal region of the Department of Health and Human Services. In addition, there is a National Resource Center on Family Based Services.

These centers are currently funded by the Department of Health and Human Services under general authority related to child welfare, child abuse and adoption services. The Administration has

proposed to eliminate funding for the ten regional and one national child welfare resource centers for fiscal year 1985.

The FY 84 funding for the 10 regional centers is $3.5 million. This amount is from the approximately $33.3 million in projects currently being funded by the Office of Human Development Services of HHS. The selection of the projects to be funded, approximately half of which are related to child welfare is at the discretion of the Department.

The purposes of the Centers are stated in the bill as including (but not being limited to):

(1) the provision of assistance in the development, and adoption by the States, or uniform systems for collection and evaluation of information and data on the programs referred to in subsection (a);

(2) the provision of assistance to individual States and groups of States in the development of education and training courses and activities relating to such programs for the staffs of child welfare agencies and for foster families, adoptive families, and other individuals and organizations;

(3) the provision of assistance in the exchange, between States, of innovations for use in the administration and implementation of such programs; and

(4) the provision of assistance in the dissemination of research and the findings of demonstration programs relating to child welfare, foster care, and adoption to public and private child welfare agencies, voluntary organizations, and members of the judiciary (Federal, State, and local) who are concerned with foster care, adoption, and other problems involving or relating to child welfare.

The bill report accompanying the House passed HHS-Labor appropriation bill (H.R. 6028) urges the Administration to continue to fund the Centers. Similar report language is in the bill report for the appropriation bill (S. 2836) which has been reported by the Senate appropriations committee.

Committee bill.—Section 103 requires the Secretary of HHS to fund in fiscal year 1986 a network of Child Welfare Resource Centers to provide assistance to States and other organizations and agencies in implementing the provisions of the Adoption Assistance and Child Welfare Amendments of 1980.

TITLE II—SSI AMENDMENTS

Part I—Treatment of Income

Sec. 201. Exclusion of certain real and personal property from income

Present law.—Under current SSI law real or personal property received is counted as income in the month it is received even if the property received would not be counted as a resource in the following months. This policy may have unduly harsh results. For example, this has resulted in a case where a disabled individual receiving SSI was married, and the value of the wedding gifts received reduced her SSI benefits.

Committee bill.—The bill provides that when certain real or personal property is received in-kind as a gift, it will not be counted as income under the SSI program in the month of receipt is such property would not be counted as a resource in the following month.

The Secretary of Health and Human Services will have authority to establish limitations on the value of such excludable property. The regulations should provide sufficient flexibility, for example, to assure that a specially equipped van that is given to a disabled individual will be excludable from income under this provision. This exclusion would not apply in cases where the property was converted to cash.

Sec. 202. Exclusion of interest and dividends from income

Present law.—Under present SSI law interest and dividend income received by recipients can cause a month-by-month fluctuation in their income and thus their SSI benefit checks.

Committee bill.—This provision would allow an SSI recipient not to have counted as income dividends received or interest income earned on resources held by the receipient to the extent that such income is derived from resources the value of which does not exceed the SSI countable resources limits. The current limits on countable resources are $15000 for an indivdual, and $2250 for a couple.

In an August 1983 Social Security Administration study it was estimated that 96,000 SSI recipients received countable interest, rental, royalty, or dividend income, and of that number 83,000 had income of less than $15 a month. Of this group 31,000 had no other income and the interest they received had no effect on their SSI benefit because of the general $20 a month disregard of any income. The remaining 52,000 (63%) had other income. The average amount of monthly interest for the latter group was about $2.80 a month.

Sec. 203. Exclusion of certain temporary income in retrospective budgeting

Present law.—Under present law the amount of the initial SSI benefit check payable for the initial month of eligibility is based on the income of the SSI applicant in that (current) month. As a transition to the two month retrospective budgeting system that is used thereafter in determining the amount of SSI benefits, the same income amount that is used to determine benefits in the initial month of eligibility is used again to determine benefits in the second and third months of eligibility. Thereafter, benefits are determined on the basis of income received in the second prior month.

The result of the procedure for transition from current month budgeting in the month of initial eligibility to two months retrospective budgeting is the SSI recipients have the same funds counted as income three times, even though the income may be temporary and received only in the first month.

Committee bill.—The bill requires that temporary non-recurring income received by persons applying for SSI may not be counted more than once under the retrospective budgeting process. This

provision must be implemented as soon as administratively feasible, but no later than October 1, 1985.

Sec. 204. Exclusion of reparations received by holocaust survivors

Present law.—Under the SSI program, income received by an applicant or recipient is counted unless it is specifically excluded by statute. Laws enacted by the Federal Republic of Germany (West Germany) and by the German Democratic Republic (East Germany) provide for regular payments to be made as reparations to Nazi holocaust survivors. These payments may result in denying eligibility or reducing SSI benefits payable to SSI recipients.

Committee bill.—The bill provides for the exclusion from income of payments received under the reparation payment laws of West Germany and East Germany by holocaust survivors. It has been estimated that 4,000 individuals would be affected by this amendment.

Part 2—Treatment of Resources

Sec. 211. Modification of penalties where assets are transferred at less than fair market value

Present law.—Since 1981, the SSI and Medicaid laws have limited eligibility for SSI and Medicaid where an individual sells or gives away any countable resource at less than fair market value.

Current law provides that an individual (or eligible spouse) who gives away or sells any nonexcludable resource for less than fair market value for the purpose of establishing SSI or Medicaid eligibility will have any uncompensated value of that resource (the difference between fair market value at the time of the transfer and the amount received for the resource) counted toward the resources limit of $1,500 for an eligible individual and $2,250 for a couple for a period of 24 months from the date of transfer. Fair market value is equal to the current value of a resource at the time of transfer. The transfer of a resource at less than fair market value is presumed to be for the purpose of establishing SSI or Medicaid eligibility unless the individual (or eligible spouse) can present convincing evidence that the transfer was exclusively for some other reason.

In 1982 Medicaid law was changed to provide exception to the 24 month period of ineligibility from the date of transfer. Under the new law states are allowed to waive the delay of medicaid eligibility in cases of undue hardship.

Committee bill.—The current law provision in which there is a two year delay in eligibility for SSI benefits when resources are transferred at less than fair market value to qualify for benefits is modified to give the Secretary of HHS the authority to waive the denial of benefits to the extent determined necessary to avoid undue hardship.

Sec. 212. Computation of vehicle value in assets test

Present law.—Under current law, an automobile is excluded from countable resources to the extent that it does not exceed such amount as the Secretary determines by regulation to be reasonable. The Secretary's current regulations provide for the exclusion of an automobile to the extent that it does not exceed $4,500 in cur-

rent market value. In addition, regulations provide that a vehicle of any value may be excluded if it is used for employment, to obtain medical treatment (at least four times a year), or if it has been modified for use by a handicapped person. The net effect of these exclusions is that one vehicle is excluded in virtually every case in which a vehicle is owned.

Committee bill.—The bill provides that in determining whether an individual or couple meets the countable resources test, there shall be excluded one automobile.

Part 3—Determination of Benefit Amounts

Section 221. Changes in one-third reduction formula

Present law.—Under present law if an SSI recipient is "living in the household of another and receiving support and maintenance in kind," the value of such in-kind assistance is presumed to equal one-third of the regular Federal SSI benefit standard and the SSI benefit standard for such an individual is reduced accordingly. "Living in the household of another and receiving support and maintenance in-kind" is defined by regulations to include an SSI applicant or recipient who has not been paying his pro rata share of the household's expenses. An individual who has little or no income when he applies for SSI will ordinarily be found not to have been paying his pro rata share, and will therefore have his first month's benefit reduced by one-third. If it is subsequently determined that during the first month in which he received benefits he did in fact contribute his pro rata share of expenses, SSA will make a finding that there was an underpayment, and will make a retroactive payment equal to the amount of the one-third reduction.

Committee bill.—The bill modifies the assumptions to be used in determining whether or not an SSI applicant is receiving in-kind assistance when living with others in such a way as to protect SSI applicants from an automatic ⅓ reduction in their initial SSI benefit if at the time of application they are living with a relatively low income household.

The bill provides that an individual who is applying for SSI will not be determined to be living in the household of another for purposes of determining the amount of the federal benefit and the amount of federally-administered State supplementation, if the individual expresses the intent to pay his pro rata share of household expenses, and his share of such expenses does not exceed two-thirds of the full benefit amount (plus federally-administered State supplementation). If it is subsequently determined that the individual did not actually contribute his pro rata share, the amount erroneously received will be recovered as an overpayment.

The primary impact of this provision will be on SSI recipients living in households with relatively low income and who, prior to applying for SSI, had little or no other income.

Section 222. Increases in benefit standards for institutionalized recipients

Present law.—When an individual enters a hospital or other medical institution in which a major part of the bill is paid by the

Medicaid program, his monthly SSI benefit standard is reduced to $25, beginning with the first full calendar month the individual is in such institution. This amount is intended to take care of small personal expenses, with the cost of maintenance and medical care being provided through other programs. The annual cost-of-living increase for SSI does not apply to the $25 benefit standard and the amount has not been increased since SSI began in 1974. Approximately 211,000 SSI recipients received benefits in September 1983 on the basis of this benefit standard. For those individuals whose income from non-SSI sources exceeds the $25 benefit standard (including those who were receiving some SSI because their social security benefits are less than the SSI benefit standard), Medicaid regulations require States to allow such individuals (and other non-SSI Medicaid eligibles) to retain $25 a month of their income as a "personal needs allowance" when their income is applied, along with Medicaid reimbursement, to pay for their institutional medical care. Approximately 600,000 individuals a month are affected by the Medicaid regulations.

Committee bill.—The current $25 a month SSI benefit standard for residents of Medicaid facilities would be increased to $35, effective January 1, 1985. The committee directs the Department of Health and Human Services to take steps to assure that the full $35 SSI payment to persons in institutions will accrue to their personal benefit, and will not be subject to misuse by the operators of those institutions, or be used by States to lower Medicaid reimbursement rates to such institutions.

Part 4—Provisions Relating to Eligibility

Section 231. Eligibility for retroactive benefits due deceased recipients

Present law.—Present law provides that only an eligible spouse may receive the retroactive payment that was due a deceased SSI recipient. During the time that it takes SSA to process an SSI application, there have been cases where the SSI recipient has died before receiving the SSI retroactive payment. Even if he/she is subsequently found to be eligible, the only person that can receive a retroactive payment is his/her spouse if the spouse is also eligible for SSI. Where there is no eligible spouse, there is no payment.

Committee bill.—The committee bill expands the current law provision to provide also for payment of retroactive benefits on behalf of a deceased recipient to the ineligible spouse, and to the parent of a disabled or blind child.

Sec. 232. Modification of certain filing requirements

Present law.—SSI law requires that an individual apply for all other benefits for which he is eligible. Thus, at age 60, those disabled widow/ers who apply for or receive SSI, are required to apply for early aged widow/ers' benefits. (These benefits are actuarially reduced.) In cases where the resulting title II benefit is sufficient to preclude further SSI eligibility, the individuals loses Medicaid coverage. He/she does not qualify for Medicare benefits until age 65. In this case, a proportionately small increase in cash income results in the loss of far more valuable medical coverage.

Committee bill.—The bill provides that certain SSI applicants or recipients (those disabled widow/ers who at age 60 qualify for reduced benefits) will not be required to file for title II benefits, if receipt of such benefits would disadvantage the individual, i.e., loss of eligibility for SSI (including Federally-administered State supplementation and subsequently health services under Medicaid.

This proposal affects widow/ers who meet title XVI disability criteria (title XVI permits consideration of age, education and vocational factors) and, as a result of their SSI eligibility, are eligible for Medicaid, and who:

(1) Do not qualify for title II disability benefits on their own earnings record, but do qualify for benefits on the record of their deceased spouse; and

(2) Do not meet title II criteria for disabled widow/ers' benefits. (Title II requires that these individuals meet or equal the medical listings; no consideration of age, education and vocational factors is permitted.)

Two characteristics of this group are significant in this regard:

(1) Prior to age 60 they met the SSI resource limit, indicating that they do not have sufficient private resources to cover their added medical costs; and

(2) The evidence suggests that they incur higher than average medical costs. A comparison of the Medicare charges incurred by the average aged beneficiary and the average disabled beneficiary indicates that those of the disabled individual are 30-40 percent higher.

Section 233. Eligibility of couples living apart

Present law.—Under current law an eligible spouse is defined as an aged, blind or disabled individual who is the spouse of another aged, blind or disabled individual and who has not been living apart from such other individual for more than six months. The result is that although only one member of a separated couple may have other income for support, the SSI benefit of both individuals is reduced according to that income. When the couple is separated, the member of the couple without other income has only one-half of a small SSI benefit available for living expenses for six months.

An exception is provided in current law when members of a couple are living apart because one member is in a medical institution. The members of the couple are considered as individuals for purposes of counting their income.

Committee bill.—The bill provides for reducing from six months to three months the time that an SSI individual and an eligible spouse must be living apart before they will be treated as individuals for determining eligibility for and the amount of SSI benefits.

Part 5—Overpayments, Emergency Payments and Interim Assistance

Section 241. Extension of Interim Assistance Program

Present law.—Current SSI law gives SSA the authority to enter into "interim assistance" agreements with States whereby if an individual has been provided assistance (non-Federally matched) during the interim between the time of application for benefits and payment of retroactive SSI benefits, the State will be reimbursed

from the retroactive SSI check for the assistance provided during the interim period.

Committee bill.—The bill expands the interim assistance program to include payment of the appropriate amount of retroactive SSI funds to the State, when the State has provided financial assistance to SSI recipients who have appealed a termination or suspension of benefits, subsequently won the appeal, and have qualified for retroactive SSI benefits. This provision is to be implemented as soon as administratively feasible, but no later than October 1, 1985.

Section 242. Study of alternative methods of promoting compliance with standards for group living facilities

Present law.—Present law requires that Federal SSI payments be reduced dollar-for-dollar for any payments made by a State to provide medical or remedial care on behalf of an SSI recipient who is in an institution that is not approved as meeting relevant State standards.

Section 1616(e) requires States to establish, maintain and insure the enforcement of standards for institutions in which a significant number of SSI recipients reside. The Social Security Administration has found it difficult to administer the related requirement that SSI payments be reduced dollar for dollar for those recipients who are in an institution that is not approved as meeting State standards. In addition, this requirement has been regarded by some as imposing a penalty on recipients, without putting effective pressure on the States to establish and maintain the necessary standards.

Committee bill.—The amendment directs HHS and GAO to analyze alternatives to current law and report findings by July 1, 1985. The Department of HHS and GAO each will analyze alternative methods which might be adopted to promote the enforcement of appropriate standards (governing such matters as admission policies, safety, sanitation, and protection of civil rights) by institutions, foster homes, and group living arrangements in which significant numbers of SSI recipients are likely to reside, and thereby to carry out more effectively the objectives of section 1616(e).

Section 243. Increased emergency advance payments for presumptively eligible individuals

Present law.—Under current law presumptively eligible aged, blind or disabled individuals or couples facing a financial emergency may receive a cash advance of up to $100 in the case of an individual and up to $200 for a couple. (Disabled or blind individuals are eligible for full benefits for three months prior to determination of eligibility only if they are also found to be presumptively disabled or blind.)

Such advance payments are issued by the SSA District Office. If the individual is subsequently determined to be eligible, the emergency advance payment is recouped in full from the SSI payment for the first month of eligibility.

Committee bill.—Section 243 allows an emergency cash advance to be made to a presumptively eligible individual for an amount up to the maximum monthly benefit payable (including Federally ad-

ministered State supplementary payments) for a period of one month.

Section 244. Notice to recipients regarding overpayments

Present law.—The notices sent by the Social Security Administration to SSI recipients who are found to have received overpayments are sometimes difficult to understand. The recipient may be given insufficient information to determine for himself whether he has actually been overpaid, to understand why he has been overpaid, and to decide whether he should seek a reconsideration of the finding, or waiver of repayment.

Committee bill.—When an individual has been overpaid, the Secretary is to send the person a notice which contains, in simple language, the following information: the precise amount of the overpayment; the months in which the overpayment occurred; the reason the overpayment occurred; a statement of the manner in which, and the rate at which, the overpayment is proposed to be recovered; a complete statement of the individual's right to seek reconsideration of the finding that overpayment occurred; the right to seek waiver of repayment; and notice that if waiver or reconsideration is sought, payment of full benefits will continue until a decision is made.

Part 6—Extension of SSI Program

Section 251. Study of extension of SSI Program

Present law.—Puerto Rico, Guam and the Virgin Islands receive Federal matching funds for cash assistance programs of aid to the aged, blind and disabled and AFDC under a separate capped entitlement provision. The program is administered under the law that was in effect for the States prior to implementation of SSI. (American Samoa has not elected to implement such provisions.)

Committee bill.—HHS would be required to conduct a study of the feasibility and cost of the extension of SSI to residents of Puerto Rico, the Virgin Islands, Guam, and American Samoa. In addition, the General Accounting Office would be required to study the overall effect of extending the Federal personal and corporate income tax laws to jurisdictions, and at the same time treating these jurisdictions as States for purposes of major benefit programs. These reports are due October 1, 1985.

The feasibility study to be submitted by HHS to Congress would include consideration of the following:

(1) the potential cost of extending the existing SSI program to Puerto Rico, Guam, the Virgin Islands, and American Samoa;

(2) the size of the populations that would be eligible for SSI benefits if the existing program were so extended;

(3) the extent to which such potential cost and population size might be reduced if the SSI benefit standard to be applied to individuals in these jurisdictions were different from the SSI benefit standard which applies to individuals in the States, and the various kinds of different standards that might be so applied;

(4) the desirability or feasibility of gradually phasing in the SSI program in these jurisdictions;

(5) the extent to which the implementation of the SSI program in each of these jurisdictions would produce offsetting savings in other Federal programs; and

(6) any other factors which might bear upon the feasibility of extending the SSI program to Puerto Rico, Guam, the Virgin Islands, and American Samoa.

Part 7—Other Amendments

Section 261. Extension of outreach efforts

Present law.—P.L. 98-21 required the Social Security Administration, prior to July 1, 1984 to notify, on a onetime basis, all elderly OASDI beneficiaries who were potentially eligible, of the availability of SSI and encourage them to contact their district offices. In addition, the provision required that the same information be included with the notification to OASDI beneficiaries of upcoming eligibility for Supplemental Medical Insurance. The results, as of July 1, 1984, have been that: 6.2 million notices were mailed; 253,000 inquiries were made to the Social Security Administration as a result of the notices; and 70,000 applications for SSI benefits have been made.

Committee bill.—Section 261 requires HHS to establish and conduct an ongoing outreach program. Notice is to be provided regarding the availability of SSI benefits to Social Security recipients:

(1) at the time when they attain age 65 and every two years thereafter;

(2) at the time an individual applies for or is awarded disability insurance benefits, and;

(3) at the time when any such indivdual is notified of his or her eligibility for Part B Medicare.

Under the provision, SSA would be required to identify persons potentially eligible for SSI from their records of OASDI beneficiaries aged 65 and over including those potentially eligible for Federally administered State supplementary payments and inform them of this potential eligibility at least every two years. SSA would be required to conduct a study of this effort as well as that required by P.L. 98-21 and to discuss the findings as they relate to program participation.

The Committee encourages SSA to develop creative approaches to outreach so that all reasonable efforts are made to identify and encourage potentially eligible persons to apply for benefits. SSA is also encouraged to continue its policy to provide all needed assistance to persons making application for benefits or meeting other requirements of the agency. As part of this effort, special care should be taken to assist those most likely to require help such as those with physical or mental impairments.

Section 262. Requirement of increased clarity and readability for written materials to be used by SSI recipients

Present law.—The Social Security Administration's procedures for preparing and reviewing notices have not had the desired result

of consistently producing written materials that are sufficiently clear and understandable to SSI applicants and recipients.

Approximately 70 percent of the SSI recipients have not completed the eighth grade. Of the 70 percent about 1/3 have not finished the fourth grade.

Committee bill.—The bill requires HHS to take action to increase the clarity and readability of written materials to be used by SSI applicants or recipients. The amendment also requires SSA "except to the extent it is determined not to be feasible" to contract with recognized experts to review current and future notices to determine if they are readily understandable by the SSi population. The objectives of simplicity and readability should not be permitted to override concerns for completeness, accuracy, or legal sufficiency.

While the committee is concerned that such documents be as clear and understandable as possible, it also recognizes that the information to be conveyed may be complex and may affect individual rights. Thus the committee recognizes that there may be instances in which there is a need to avoid oversimplifications or omissions that might tend to compromise the legal issues.

Section 263. Provision of notice to blind SSI recipients

Present law.—There is no provision in current law requiring that individuals who are blind must receive special notice of official actions that may affect their benefits. Because such special notice is not provided, some blind individuals have unknowingly not taken advantage of the opportunities provided them by law to request consideration of a decision, or to request waiver of an overpayment.

Committee bill.—This provision will require the Secretary of Health and Human Services to provide those SSI recipients who are blind with the option to receive a special notice of official actions which may affect their SSI benefit rights. The SSI recipient will be provided the option to receive a supplementary notice any action by SSA by telephone or to receive the initial notice by certified letter. The Secretary must attempt to provide all blind SSI recipients with the option to receive this supplementary notification at least one year after the bill is enacted.

It also requires the Secretary to conduct a study to determine the feasibility of providing supplementary notification rights to individuals who may have difficulty in reading printed notices. These individuals may include the mentally impaired and persons for whom English is a second language.

The provision is designed to assist blind SSI recipient react to any official notice from SSA requiring them to respond in a timely fashion. Many blind individuals have limited access to sighted people who can read their written notices. A certified letter can be useful in alerting such beneficiaries that SSA is attempting to get in contact with them. A telephone call will provide recipients with specific information about the nature of a proposed change in their case. This amendment seeks to prevent blind individuals from losing their SSI benefits due to a failure to appeal or respond to agency actions.

The provision also seeks to discover what to other types of recipients may have difficulty understanding and responding to printed

notices. This report would be presented to Congress 6 months after the date of enactment.

Section 264. General effective date

Except as otherwise provided, the provisions of title II become effective January 1, 1985.

III. Budget Effects of the Bill

1. COMMITTEE ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives the following statement is made: the Committee agrees with the cost estimate prepared by the Congressional Budget Office which is included below.

2. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

With respect to clause 2(l)(3)(B) of Rule XI of the rules of the House, the Committee advises that the required information pertaining to new budget authority of new or increased tax expenditures, to the extent applicable to this bill, is continued in the Congressional Budget Office estimate included below.

3. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 2(l)(3)(C) of rule XI, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by the Congressional Budget Office is provided.

U.S. Congress
Congressional Budget Office,
Washington, DC, September 20, 1984.

Hon. Dan Rostenkowski,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 6266, the Foster Care and Supplemental Security Income Amendments, as ordered reported by the House Committee on Ways and Means, September 19, 1984.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudolph G. Penner, *Director.*

Congressional Budget Office Cost Estimate—September 20, 1984

1. Bill number: H.R. 6266.
2. Bill title: Foster Care and Supplemental Security Income Amendments
3. Bill status: As ordered reported by the House Committee on Ways and Means, September 19, 1984.
4. Bill Purpose: The purposes of Title I of this bill are (1) to extend for one year the authorization of federal foster care match-

ing payments for specific cases of children voluntarily placed in foster care, (2) to extend for one year the federal payments of additional foster care funds to states that qualify, and (3) to change the authorization for the regional child welfare resource centers from an indefinite authority to a definite authority.

The purpose of Title II is to amend Title XVI of the Social Security Act to make necessary improvements in the Supplemental Security Income (SSI) program with the objective of assuring that such program will more realistically and more equitably reflect the needs and circumstances of applicants and recipients thereunder.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1985	1986	1987	1988	1989
Direct spending:					
Function 500:					
Budget Authority	40				
Outlays	40				
Function 550:					
Budget Authority	31	43	45	46	49
Outlays	31	43	45	46	49
Function 570:					
Budget Authority	(1)	(1)	1	2	3
Outlays	−2	−5	−8	−11	−14
Function 600:					
Budget Authority	24	38	43	49	53
Outlays	24	38	43	49	53
Subtotal direct spending:					
Budget Authority	95	81	89	97	105
Outlays	93	76	80	84	88
Amounts subject to appropriations action:					
Function 600:					
Authorization Level	(1)	−1	−1	−2	−2
Outlays	(1)	−1	−1	−2	−2
Total:					
Budget Authority/Authorization Levels	95	80	88	95	103
Outlays	93	75	79	82	86

[1] Less than $500,000.

BASIS OF ESTIMATE

Detailed estimates of Title I and Title II of the bill are discussed in turn below.

TITLE I

Title I of this bill extends for one year the authorization of federal foster care matching payments for specific cases of children voluntarily placed in foster care. Based on the 1984 data, the additional cost of extending this provision would be less than $500,000.

H.R. 6266 also extends the authorization for additional foster care payments to states for child welfare-services. A state qualifies for these additional payments if their foster care claims in any year are below an optional federal ceiling and the appropriation for the child welfare services grants to states is below the maximum authorization level of $266 million currently in law.

The level of these additional payments in 1985 is to be based on the 1985 appropriations level of the discretionary child welfare services grants to states. Since there is no 1985 appropriations to date for child welfare services, this estimate is based on the $165 million level included in H.R. 6028, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, 1985, as passed by the House of Representatives. Based on this level of funding the additional payments would be $40 million in 1985.

TABLE 1.—ESTIMATED FEDERAL COST OF THE FOSTER CARE PROVISIONS IN H.R. 6266

[By fiscal year, in millions of dollars]

	1985	1986	1987	1988	1989
Outlays:					
Voluntary placement foster care payments	(1)				
Foster care funds for child welfare programs	40				
Total outlays (Function 500)	40				

[1] Less than $500,000

Authorization currently exists in law for the regional child welfare resource centers. This bill does not increase that authorization but changes it from an indefinite to a definite authority by mandating a set aside of appropriated funds for this specific purpose.

TITLE II

Estimated outlays for each of the provisions in Title II are shown in Table 2. Many of the provisions are estimated to have a negligible effect on outlays. For those provisions that are estimated to change outlays by a significant amount, a description of the methodology used for the estimates follows. The estimates assume an enactment date prior to January 1, 1985 when the bill's provisions would be effective.

TABLE 2.—ESTIMATED FEDERAL COST OF THE SSI PROVISIONS IN H.R. 6266

[By fiscal year, in millions of dollars]

	1985	1986	1987	1988	1989
Outlays:					
Exclude some personal property from income	(1)	(1)	(1)	(1)	(1)
Exclude interest and dividends from income	(1)	(1)	(1)	(1)	(1)
Exclude temporary income in retrospective budgeting	(1)	(1)	(1)	(1)	(1)
Exclude holocaust reparations	(1)	(1)	(1)	(1)	(1)
Reduce penalties if assets transferred below market	(1)	(1)	(1)	(1)	(1)
Remove one car from asset test	(1)	(1)	(1)	(1)	(1)
Alter one-third reduction	2	2	2	2	2
Raise benefits of institutionalized to $35:					
SSI	20	25	25	25	25
Medicaid	30	40	40	40	40
Total	(50)	(65)	(65)	(65)	(65)
Give retroactive benefits due the deceased to relatives	1	1	1	1	1
Repeal requirement to take OASDI for disabled widows:					
SSI	1	4	6	9	11

TABLE 2.—ESTIMATED FEDERAL COST OF THE SSI PROVISIONS IN H.R. 6266—Continued

[By fiscal year, in millions of dollars]

	1985	1986	1987	1988	1989
Medicaid	1	2	3	4	6
DI	−2	−5	−8	−11	−14
Total	(1)	(1)	(1)	(2)	(3)
Increase benefits to couples who cease living together	(1)	1	1	1	1
Extend interim assistance	(1)	(1)	(1)	(1)	(1)
Repeal penalty for group living standards	(1)	(1)	(1)	(1)	(1)
Expand emergency payments	(1)	(1)	(1)	(1)	(1)
Alter notice on overpayments	(1)	(1)	(1)	(1)	(1)
Study extension to Puerto Rico, Guam, Virgin Islands, and American Samoa	(1)	(1)			
Expand outreach:					
SSI	(1)	5	8	11	13
Medicaid	(1)	1	2	2	3
Food stamps	(1)	−1	−1	−2	−2
Total	(1)	(5)	(9)	(11)	(14)
Improve clarity of materials	(1)	(1)	(1)	(1)	(1)
Provide special notice to blind beneficiaries	(1)	(1)	(1)	(1)	(1)
Total outlays:					
SSI (Function 600)	24	38	43	49	53
Medicaid (Function 550)	31	43	45	46	49
Food Stamps (Function 600)	0	−1	−1	−11	−14
DI (Functional 570)	−2	−5	−8	−11	−14
Total	53	75	79	82	86

[1] Less than $500,000.

Alter one-third reduction.— Currently in SSI, beneficiaries have their SSI benefits reduced by one-third if they are living in another person's household and are not paying their pro rata share of the household's expenses. This provision would preclude a one-third reduction in SSI benefits as long as beneficiaries' pro rata share of expenses is no greater than two-thirds of the SSI basic benefit. This provision would affect primarily new SSI applicants, who may not be able to pay their pro rata share until they receive their SSI benefits, which may take several months. About 9,000 beneficiaries a year are estimated to be affected by this proposed change, and each would receive an added $105 a month for an estimated two months. Thus this provision would cost $2 million a year.

Raise benefits of institutionalized to $35.— When an SSI beneficiary enters an institution in which costs are covered by Medicaid, SSI benefits are currently reduced to $25 a month. This provision would increase SSI benefits to $35 a month for the 211,000 SSI beneficiaries in institutions, resulting in added SSI costs of $25 million a year.

This provision would also raise Medicaid costs because current regulations provide that non-SSI Medicaid beneficiaries in institutions can keep income equal to the SSI benefit (with the remainder of their income paid to Medicaid). About 600,000 non-SSI Medicaid beneficiaries in institutions are affected by this provision, for an added Medicaid cost to the federal government of $40 million a year.

Give retroactive benefits due the deceased to relatives.—Under current law, when an applicant for SSI dies before receiving benefits, retroactive benefits due the applicant are not passed on to the applicant's family (unless the spouse is also eligible for SSI). This provision would require payment of the retroactive benefits to a spouse or to a parent of a disabled child. An estimated $6 million in retroactive SSI benefits are due deceased beneficiaries each year; about 20 percent of this total, or $1 million a year, is estimated to go to a spouse or parent under this provision.

Repeal requirement to take OASDI for disabled widows.—SSI law requires that individuals apply for all other benefits for which they are eligible. This provision would permit disabled widows or widowers over the age of 60 to remain on SSI rather than take Disability Insurance (DI) benefits that would remove them from the SSI and Medicaid programs. As a result, costs would rise in the SSI and Medicaid programs and fall in the DI program, totaling an estimated $1 million a year in 1985. About 2,000 persons a year are estimated to be in this situation, and the estimate assumes that one-third would choose to stay in SSI rather than receive DI.

Increase benefits to couples who cease living together.—When an SSI couple (two married persons each eligible for SSI) ceases living together they must currently wait for six months before they receive individual SSI benefits rather than the lower couple benefits. This provision would reduce the waiting period to three months. Based on divorce and separation rates among the aged and disabled, about 1,600 SSI couples a year are estimated to cease living together. They woud each receive $150–$200 a month in added SSI benefits for three months, resulting in estimated SSI costs of $1 million a year.

Expand outreach.—The bill would require the Social Security Administration (SSA) to expand its outreach efforts, primarily by contracting potentially eligible OASDI beneficiaries aged 65 and over at least every two years. The SSA has recently completed a similar outreach effort in which about 1 percent of the OASDI beneficiaries contacted by mail have applied for SSI benefits. This estimate assumes that outreach efforts to the same individuals every two years would result in applications equal to 10 percent of applications from the current outreach effort. SSI administrative and benefit outlays would rise, as would Medicaid outlays for the newly eligible SSI beneficiaries; food stamp outlays would decline with the rise in incomes of the new SSI beneficiaries. Costs are estimated to total $5 million in 1986 and $14 million in 1989.

6. Estimated cost to State and Local Governments:

TITLE I

The additional foster care funds for child welfare programs go to states that comply with an optional federal ceiling on foster care claim payments. In 1984, over 30 states received a total of $42 million for complying with the ceiling. If these additional payments were not extended, states receiving the additional payments would have to increase funding at the state level or reduce services.

TITLE II

Costs to state and local governments for the SSI and Medicaid programs would increase as a result of the bill's provisions. Most states supplement the SSI federal benefit levels, leading to a rise in their costs when federal costs rise. However, states generally do not supplement payments to SSI beneficiaries in Medicaid institutions so there is no significant cost to them from the provision raising the payment to the institutionalized from $25 to $35 a month. States' SSI costs are estimated to increase by $1 million in 1985 and $4 million by 1989 from the bill's provisions.

States and localities finance on average about 46 percent of the Medicaid program, with the federal government picking up the remaining 54 percent. Thus the two provisions that would increase federal Medicaid costs would also increase state costs, by an estimated $26 million in 1985 rising to $42 million by 1989.

7. Estimate comparision: None.

8. Previous CBO estimate: None.

9. Estimate prepared by Janice Peskin, Deborah Kalcevic, Stephen Chaikind, and Jack Rodgers.

10. Estimate approved by C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

IV. Other Matters Required To Be Discussed Under the Rules of the House

1. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of the rule XI, the following statement is made: the bill, H.R. 6266, as amended was ordered favorably reported to the House of Representatives by a voice vote.

2. OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of the rule XI, the Committee states that the provisions of this bill are consistent with its oversight findings, as discussed in the Explanation and Justification section of this report.

3. OVESIGHT BY COMMITTEE ON GOVERNMENT OPERATIONS

With respect to clause 2(l)(3)(D) of rule XI, the committee advises that no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations regarding the subject of this bill.

4. INFLATION IMPACT

In compliance with clause 2(l)(4) of the rule XI, the Committee states that the enactment of this bill is not expected to have any significant inflationary impact on prices and costs in the operation of the national economy.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 102 OF THE ADOPTION ASSISTANCE AND CHILD WELFARE ACT OF 1980

FEDERAL PAYMENTS FOR DEPENDENT CHILDREN VOLUNTARILY PLACED IN FOSTER CARE

SEC. 102. (a)(1) Effective with respect to expenditures made after September 30, 1980, and before October 1, [1984] *1985*, section 472(a) of the Social Security Act (as added by section 101 of this Act) is amended—

(A) by inserting "occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or" after "removal from the home" in paragraph (1);

(B) by striking out "a determination" in paragraph (3) and inserting in lieu thereof "the voluntary placement agreement or judicial determination";

(C) by inserting "such agreement was entered into or" after "the month in which" in paragraph (4)(A); and

(D) by inserting "such agreement was entered into or" after "the month in which" in paragraph (4)(B)(ii).

* * * * * * *

(c) The amendments made by subsections (a) and (b) shall be effective only with respect to expenditures made after September 30, 1979, and before October 1, [1984,] *1985;* and from and after October 1, [1984,] *1985,* the provisions of law amended by such subsections shall read as they would if this section had not been enacted.

* * * * * * *

Social Security Act

* * * * * * *

TITLE IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

* * * * * * *

PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

* * * * * * *

PAYMENTS TO STATES; ALLOTMENTS TO STATES

SEC. 474. (a) For each quarter beginning after September 30, 1980, each State which has a plan approved under this part (subject to the limitations imposed by subsection (b)) shall be entitled to a payment equal to the sum of—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total

amount expended during such quarter as foster care maintenance payments under section 472 for children in foster family homes or child-care institutions; plus

(2) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total amount expended during such quarter as adoption assistance payments under section 473 pursuant to adoption assistance agreements; plus

(3) an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision, and

(B) one-half of the remainder of such expenditures.

(b)(1) Notwithstanding the provisions of subsections (a)(1) and (a)(3), the aggregate of the sums payable thereunder to any State (other than a State subject to limitation under section 1108(a)) with respect to expenditures relating to foster care, for the calendar quarters in any of the fiscal years 1981 through [1984] *1985* in which the conditions set forth in paragraph (2) are met, shall not exceed the State's allotment for such year.

(1)(A) The limitation in paragraph (1) shall apply—

(i) with respect to fiscal year 1981, only if the amount appropriated under section 420 for such fiscal year is equal to or greater than $163,550,000;

(ii) with respect to fiscal year 1982, only if the amount appropriated under section 420 for such fiscal year is equal to or greater than $220,000,000;

(iii) with respect to fiscal year 1983, only if the amount appropriated under section 420 for such fiscal year is equal to $266,000,000; [and]

(iv) with respect to fiscal year 1984, only if the amount appropriated under section 420 for such fiscal year is equal to $266,000,000; *and*

(v) with respect to fiscal year 1985, only if the amount appropriated under section 420 for such fiscal year is equal to $266,000,000.

(B) The limitations set forth in paragraph (1) with respect to the fiscal years 1982 through [1984] *1985* shall apply only if the required appropriation is made in advance in an appropriation Act (as authorized under section 420(b)) for the fiscal year preceding the fiscal year to which the limitation would apply.

(3) For purposes of this subsection, a State's allotment for any fiscal year shall be the greater of—

(A) the amount determined under paragraph (4);

(B) an amount which bears the same ratio to $100,000,000 as the under age eighteen population of such State bears to the

under age eighteen population of the fifty States and the District of Columbia; or

(C) at the option of the State, an amount determined under paragraph (5), but only in the case of a State which meets the requirements of such paragraph (5).

(4) For purposes of paragraph (3)(A), a State's allotment shall be determined as follows:

(A) The allotment for any State for fiscal year 1980 shall be an amount equal to such State's base amount (as determined under subparagraph (C)) increased by 21.2 percent.

(B) The allotment for any State for each of the fiscal years 1981 through [1984] *1985* shall be an amount equal to such State's allotment for the preceding fiscal year, increased or decreased by a percentage equal to twice the percentage increase or decrease (as the case may be) (but not to exceed an increase or decrease of 10 percent) in the Consumer Price Index prepared by the Department of Labor, and used in determining cost-of-living adjustments under section 215(i) of this Act, for the second quarter of the preceding fiscal year as compared to such index for the second quarter of the second preceding fisacl year. For purposes of this subparagraph the Consumer Price Index for any quarter shall be the arithmetical mean of such index for the three months in such quarter.

(C) The base amount shall be equal to the amount of the Federal funds payable to such State for fiscal year 1978 under section 403 on account of expenditures for aid with respect to which Federal financial participation is authorized in payments pursuant to section 408 (including administrative expenditures attributable to the provision of such aid as determined by the Secretary) and for those States which in fiscal year 1978 did not make foster care maintenance payments under section 408 on behalf of children otherwise eligible for such payment, solely because their foster care was provided by related persons, shall be equal to the total amount of Federal funds the State would have been entitled to be paid under section 403 on account of expenditures pursuant to section 408 for that fiscal year if such payments had been made. In the event that there is a dispute between any State and the Secretary as to the amount of such expenditures for such fiscal year, then, until the beginning of the fiscal year immediately following the fiscal year in which the dispute is finally resolved, the base amount shall be deemed to be the amount of Federal funds which would have been payable under section 403 if the amount of such expenditures were equal to the amount thereof claimed by the State.

(5)(A) For purposes of paragraph (3)(C), a State's allotment for any fiscal year ending after September 30, 1980, and before October 1, [1984] *1985,* may, at the option of the State (and if the State meets the requirements of subparagraphs (B) and (C)), be determined by application of the provisions of paragraph (4) with the following modifications:

(i) The base amount for purposes of determining an allotment for any such fiscal year shall be equal to the base amount determined under paragraph (4)(C) increased by a per-

centage equal to the percentage by which the average monthly number of children in such State receiving aid with rspect to which Federal financial participation is authorized in payments pursuant to section 408, or receiving foster care maintenance payments with respect to which Federal financial participation is authorized under this part, for such fiscal year exceeds the average monthly number of such children for fiscal year 1978.

(ii) For purposes of clause (i), the percentage determined under such clause shall not exceed 33.1 percent in the case of fiscal year 1981, 46.4 percent in the case of fiscal year 1982, 61.1 percent in the case of fiscal year 1983, or 77.2 percent in the case of [fiscal year 1984.] *each of fiscal years 1984 and 1985.*

* * * * * * *

(c)(1) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through [1984] *1985* during which the limitation under subsection (b)(1) is in effect, sums available to a State from its allotment under subsection (b) for carrying out this part, which the State does not claim as reimbursement for expenditures in such year pursuant to subsection (a) of this section, may be claimed by the State as reimbursement for expenditures in such year pursuant to part B of this title, in addition to sums available pursuant to section 420 for carrying out part B.

(2) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through [1984] *1985* during which the limitation under subsection (b)(1) is not in effect a state may claim as reimbursement for expenditures for such year pursuant to part B of this title, in addition to amounts claimed under section 420, an amount equal to the amount by which the State's allotment amount for such fiscal year (as determined under subsection (b)(3)) exceeds the amount claimed by such State for such fiscal year as reimbursement for expenses relating to foster care under subsection (a); except that the total amount claimed by such State for such fiscal year under this paragraph, when added to the amount that such State receives for such fiscal year under section 420, may not exceed the amount that would have been payable to such State under section 420 for such fiscal year if the relevant amount described in subsection (b)(2)(A) had been appropriated for such fiscal year.

* * * * * * *

CHILD WELFARE RESOURCE CENTERS

SEC. 477. (a) The Secretary shall provide for the establishment or continuation of a network of Child Welfare Resource Centers to help in the implementation of programs relating to child welfare under part B and programs relating to foster care and adoption assistance under this part.

(b) The purposes of the Centers shall include (without being limited to)—

(1) the provision of assistance in the development, and adoption by the States, of uniform systems for the collection and

evaluation of information and data on the programs referred to in subsection (a);

(2) the provision of assistance to individual States and groups of States in the development of education and training courses and activities relating to such programs for the staffs of child welfare agencies and for foster families, adoptive families, and other individuals and organizations;

(3) the provision of assistance in the exchange, between States, of innovations for use in the administration and implementation of such programs; and

(4) the provision of assistance in the dissemination of research and the findings of demonstration programs relating to child welfare, foster care, and adoption to public and private child welfare agencies, voluntary organizations, and members of the judiciary (Federal, State, and local) who are concerned with foster care, adoption, and other problems involving or relating to child welfare.

(c) The Secretary shall provide the necessary funding for the Child Welfare Resource Centers established or continued in accordance with this section, and shall use for this purpose during any period (1) any funds to which States are entitled under section 474(a) for such period but which remain unpaid and unclaimed after the application of sections 474(b) and 474(c), and (2) such sums as may be appropriated for purposes of this section. The use of the funds described in clause (1) of the preceding sentence for this purpose (to the extent that such funds are appropriated on or after the date of the enactment of this section), and the appropriations referred to in clause (2) of such sentence, are hereby expressly authorized.

* * * * * * *

TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

* * * * * * *

PART A—DETERMINATION OF BENEFITS

ELIGIBILITY FOR AND AMOUNT OF BENEFITS

Definition of Eligible Individual

SEC. 1611. (a)(1) * * *

* * * * * * *

(c)(1) An individual's eligibility for a benefit under this title for a month shall be determined on the basis of the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics in such month, and, except as provided in paragraphs (2), (3), and (4), the amount of such benefit shall be determined for such month on the basis of income and other characteristics in the first or, if the Secretary so determines, second month preceding such month. Eligibility for and the amount of such benefits shall be redetermined at such time or times as may be provided by the Secretary.

(2) The amount of such benefit for the month in which an application for benefits becomes effective (or, if the Secretary so determines, for such month and the following month) and for any month immediately following a month of ineligibility for such benefits (or, if the Secretary so determines, for such month and the following month) shall—

(A) be determined on the basis of the income of the individual and the eligible spouse, if any, of such individual and other relevant circumstances in such month; and

(B) in the case of the month in which an application becomes effective or the first month following a period of ineligibility, if such application becomes effective, or eligibility is restored, after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if such application had become effective, or eligibility had been restored, on the first day of such month as the number of days in such month including and following the effective date of such application or restoration of eligibility bears to the total number of days in such month.

Any income which is received by an individual in the month in which such individual's application for benefits under this title becomes effective (or, if the Secretary so determines, in such month and the following month) or in any month immediately following a month of such individual's ineligibility for such benefits (or, if the Secretary so determines, in such month and the following month), and which constitutes income in an amount which such individual does not continue to receive in subsequent months, shall be taken into account in determining the amount of the benefit of such individual (and his eligible spouse if any) only for that month and shall not be taken into account in determining the amount of the benefit for any subsequent month.

(3) For purposes of this subsection, an increase in the benefit amount payable under title II (over the amount payable in the preceding month, or, at the election of the Secretary, the second preceding month) to an individual receiving benefits under this title shall be included in the income used to determine the benefit under this title of such individual for any month which is—

(A) the first month in which the benefit amount payable to such individual under this title is increased pursuant to section 1617, or

(B) at the election of the Secretary, the month immediately following such month.

(4)(A) Notwithstanding paragraph (3), if the Secretary determines that reliable information is currently available with respect to the income and other circumstances of an individual for a month (including information with respect to a class of which such individual is a member and information with respect to scheduled cost-of-living adjustments under other benefit programs), the benefit amount of such individual under this title for such month may be determined on the basis of such information.

(B) The Secretary shall prescribe by regulation the circumstances in which information with respect to an event may be taken into

account pursuant to subparagraph (A) in determining benefit amounts under this title.

* * * * * * *

Limitation on Eligibility of Certain Individuals

(e)(1)(A) Except as provided in subparagraphs (B), (C), and (D), no person shall be an eligible individual or eligible spouse for purposes of this title with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month, in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX, the benefit under this title for such individual for such month shall be payable—

(i) at a rate not in excess of [$300] *$420* per year (reduced by the amount of any income not excluded pursuant to section 1612(b)) in the case of an individual who does not have an eligible spouse;

(ii) in the case of an individual who has an eligible spouse, if only one of them is in such a hospital, home or facility throughout such month, at a rate not in excess of the sum of—

(I) the rate of [$300] *$420* per year (reduced by the amount of any income, not excluded pursuant to section 1612(b), of the one who is in such hospital, home, or facility), and

(II) the applicable rate specified in subsection (b)(1) (reduced by the amount of any income, not excluded pursuant to section 1612(b), of the other); and

(iii) at a rate not in excess of [$600] *$840* per year (reduced by the amount of any income not excluded pursuant to section 1612(b)) in the case of an individual who has an eligible spouse, if both of them are in such a hospital, home, or facility throughout such month.

(C) As used in subparagraph (A), the term "public institution" does not include a publicly operated community residence which serves no more than 16 residents.

(D) A person may be an eligible individual or eligible spouse for purposes of this title with respect to any month throughout which he is a resident of a public emergency shelter for the homeless (as defined in regulations which shall be prescribed by the Secretary); except that no person shall be an eligible individual or eligible spouse by reason of this subparagraph more than three months in any 12-month period.

(2)*(A)* No person shall be an eligible individual or eligible spouse for purposes of this title if, after notice to such person by the Secretary that it is likely that such person is eligible for any payments of the type enumerated in section 1612(a)(2)(B), such person fails within 30 days to take all appropriate steps to apply for and (if eligible) obtain any such payments.

(B) Subparagraph (A) shall not require any person who has attained the age of 60 but not the age of 65 and who is applying for or receiving benefits under this title, in order to be an eligible individ-

ual or eligible spouse for purposes of this title, to apply for and (if eligible) obtain any benefits which may be payable to such person under subsection (e) or (f) of section 202 (or under any other subsection of section 202 if such person is also eligible for benefits under subsection (e) or (f)), in any case where the receipt of such benefits under section 202 would render such person ineligible for benefits under this title. The Secretary shall inform each person to whom the preceding sentence applies of his or her potential eligibility for benefits under title II, of the potential risk of loss of his or her eligibility for assistance under title XIX, and of his or her right to elect (in view of that risk) not to apply for such benefits.

* * * * * * *

INCOME

Meaning of Income

SEC. 1612. (a) For purposes of this title, income means both earned income and unearned income; and—

(1) earned income means only—

(A) wages as determined under section 203(f)(5)(C);

(B) net earnings from self-employment, as defined in section 211 (without the application of the second and third sentences following subsection (a)(11), and the last paragraph of subsection (a)), including earnings for services described in paragraphs (4), (5), and (6) of subsection (c);

(C) any refund of Federal income taxes made by reason of section 43 of the Internal Revenue Code of 1954 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit); and

(D) remuneration received for services performed in a sheltered workshop or work activities center; and

(2) unearned income means all other income, including—

(A) * * *

* * * * * * *

(F) rents dividends, interest, and royalties.

For purposes of paragraph (2)(A)(i), an individuial (and his eligible spouse, if any) will not be determined to be living in the household of another for purposes of determining eligibility or benefit amount, upon application or following a period of suspension, if (i) the individual states that, upon receipt of benefits under this title, he will pay his pro rata share of the expenses of the household in which he is living, and (ii) his pro rata share of such expenses does not exceed two-thirds of the dollar amounts of income applicable to such individual (and spouse) as specified in section 1611(a) (and increased by the applicable amount of any federally-administered State supplementation unreduced by income). Notwithstanding the preceding sentence, if the Secretary, upon redetermination of such individual's (and spouse's) eligibility and benefit amount, determines that he did not pay such share for any month, any portion of the individual's benefits paid for the period prior to such redetermination shall be considered overpayments to the extent that they would not have

been paid but for the individual's statement of intent under clause (i) of the preceding sentence.

Exclusions From Income

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) * * *

* * * * * * *

(12) *(A) income in the form of interest and dividends (other than interest income described in clause (B)) to the extent that such income is derived from resources the value of which does not exceed the applicable dollar amount specified in paragraph (1)(B) or (2)(B) of section 1611(a), and (B)* interest income received on assistance funds referred to in paragraph (11) within the 9-month period beginning on the date such funds are received (or such longer periods as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and

(13) any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy[.]*;*

(14) unearned income, within such limit or limits as the Secretary may by regulation prescribe, received in kind in the form of real or personal property which is not converted into cash in the month of receipt if (A) any part of its value qualifies for exclusion from the resources of such individual (and spouse if any), or (B) section 1613(b) will be applicable to such property after such month of receipt; and

(15) amounts received as reparations under the Federal Law on the Compensation of Victims of the National Socialist Persecution (Federal Compensation Law), as enacted by the Federal Republic of Germany on June 29, 1956, or received as reparations under laws of the German Democratic Republic having the same general purposes or objectives.

RESOURCES

Exclusions From Resources

SEC. 1613. (a) In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

(1) the home (including the land that appertains thereto);

(2)[(A) household goods, personal effects, and an automobile, to the extent] *(A) an automobile;* that their total value does not exceed such amount as the Secretary determines to be reasonable; and

(B) household goods and personal effects, to the extent

[(B)] *(C)* the value of any burial space (subject to such limits as to size or value as the Secretary may by regulation prescribe) held for the purpose of providing a place for the burial of the individual, his spouse, or any other member of his immediate family;

(3) other property which, as determined in accordance with and subject to limitations prescribed by the Secretary, is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion;

(4) such resources of an individual who is blind of disabled and who has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan;

(5) in the case of Natives of Alaska's shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 7(h) and section 8(c) of the Alaska Claims Settlement Act;

(6) assistance referred to in section 1612(b)(11) [2] for the 9-month period beginning on the date such funds are received (or for such longer period as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period), and, for purposes of this paragraph, the term "assistance" includes interest thereon which is excluded from income under section 1612(b)(12); and

(7) any amount received from the United States which is attributable to underpayments of benefits due for one or more prior months, under this title or title II, to such individual (or spouse) or to any other person whose income is deemed to be included in such individual's (or spouse's income for purposes of this title, but the application of this paragraph in the case of any such individual (and eligible spouse if any), with respect to any amount so received from the United States, shall be limited to the first 6 months following the month in which such amount is received, and written notice of this limitation shall be given to the recipient concurrently with the payment of such amount.

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is $1,500 or less, not part of the value of any such policy shall be taken into account.

* * * * * * *

DISPOSAL OF RESOURCES FOR LESS THAN FAIR MARKET VALUE

(c)(1) In determining the resources of an individual (and his eligible spouse, if any) there shall be included (but subject to the exclusions under subsection (a), *and subject to the provisions of paragraph (4) of this subsection*) any resource (or interest therein) owned by such individual or eligible spouse within the proceding 24

months if such individual or eligible spouse gave away or sold such resource or interest at less than fair market value of such resource or interest for the purpose of establishing eligibility for benefits or assistance under this Act.

(2) Any transaction described in paragraph (1) shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance under this Act unless such individual or eligible spouse furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

(3) For purposes of paragraph (1) the value of such a resource or interest shall be the fair market value of such resource or interest at the time it was sold or given away, less the amount of compensation received for such resource or interest, if any.

(4) The Secretary may by regulation provide for suspending the application of paragraph (1) to the extent (in any instance) that the Secretary determines that such suspension is necessary to avoid undue hardship.

Funds Set Aside for Burial Expenses

(d)(1) * * *

* * * * * * *

(4) The Secretary [may] *shall* provide by regulations that whenever an amount set aside to meet burial and related expenses is excluded under paragraph (1) in determining the resources of an individual any interest earned or accrued on such amount (and left to accumulate), and any appreciation in the value of prepaid burial arrangements for which such amount was set aside, shall also be excluded (to such extent and subject to such conditions or limitations as such regulations may prescribe) in determining the resources (and the income) of such individual.

MEANING OF TERMS

Aged, Blind, or Disabled Individual

SEC. 1614. (a)(1) * * *

* * * * * * *

Eligible Spouse

(b) For purposes of this title, the term "eligible spouse" means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who has not been living apart from such other aged, blind, or disabled individual for more than [six] *three* months. If two aged, blind, or disabled individuals are husband and wife as described in the preceding sentence, only one of them may be an "eligible individual" within the meaning of section 1611(a).

* * * * * * *

PART B—PROCEDURAL AND GENERAL PROVISIONS

PAYMENTS AND PROCEDURES

Payment of Benefits

SEC. 1631. (a)(1) Benefits under this title shall be paid at such time or times and in such installments as will best effectuate the purposes of this title, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

(2) Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse). Notwithstanding the provisions of the preceding sentence, in the case of any individual or eligible spouse referred to in section 1611(e)(3)(A), the Secretary shall provide for making payments of the benefit to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).

(3) The Secretary may by regulation establish ranges of incomes within which a single amount of benefits under this title shall apply.

(4) The Secretary—

(A) may make to any individual initially applying for benefits under this title who is presumptively eligible for such benefits and who is faced with financial emergency [a cash advance against such benefits in an amount not exceeding $100] *a cash advance against such benefits in an amount not exceeding the amount of the monthly benefit for which he is presumptively eligible, including any federally-administered State supplementary payments, for the first month of such presumptive eligibility*; and

(B) may pay benefits under this title to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 3 months prior to the determination of such individual's disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) solely because such individual is determined not to be disabled or blind.

OVERPAYMENTS AND UNDERPAYMENTS

(b)(1)(*A*) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or [by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary (A) shall make] *by recovery from such individual or his eligible spouse (or from the estate of*

either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—

(i) to any surviving husband or wife (whether or not the individual's eligible spouse) with whom the individual was living at the time of his death or within the 6 months immediately preceding such death, or

(ii) if such individual was a disabled or blind child who was living with his parent or parents at the time of his death or within the 6 months immediately preceding such death, to such parent or parents.

(B) The Secretary (i) shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this title, or be against equity *and* good conscience, or (because of the small amount involved) impede efficient or effective administration of this title, and [(B)] *(ii)* shall in any event make the adjustment or recovery (in the case of payment of more than the correct amount of benefits), in the case of an individual or eligible spouse receiving benefit payments under this title (including supplementary payments of the type described in section 1616(a) and make payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), in amounts which in the aggregate do not exceed (for any month) the lesser of [(i)] *(I)* the amount of his or their benefit under this title for that month or [(ii)] *(II)* an amount equal to 10 percent of his or their income for that month (including such benefit but excluding any other income excluded pursuant to section 1612(b)), unless fraud, willful misrepresentation, or concealment of material information was involved on the part of the individual or spouse in connection with the overpayment, or unless the individual requests that such adjustment or recovery be made at a higher or lower rate and the Secretary determines that adjustment or recovery at such rate is justified and appropriate. The availability (in the case of an individual who has been paid more than the correct amount of benefits) of procedures for adjustment or recovery at a limited rate under clause [(B)] *(ii)* of the preceding sentence shall not, in and of itself, prevent or restrict the provision (in such case) of more substantial relief under clause [(A)] *(i)* of such sentence.

(2) In any case in which advance payments for a taxable year made by all employers to an individual under section 3507 of the Internal Revenue Code of 1954 (relating to advance payment of earned income credit) exceed the amount of such individual's earned income credit allowable under section 32 of such Code for such year, so that such individual is liable under section 32(g) of such Code for a tax equal to such excess, the Secretary shall provide for an appropriate adjustment of such individual's benefit amount under this title so as to provide payment to such individual of an amount equal to the amount of such benefits lost by such individual on account of such excess advance payments.

(3) If any overpayment with respect to an individual (or an individual and his or her spouse) is attributable solely to the ownership

or possession by such individual (and spouse if any) of resources having a value which exceeds the applicable dollar figure specified in paragraph (1)(B) or (2)(B) of section 1611(a) by $50 or less, such individual (and spouse if any) shall be deemed for purposes of the second sentence of paragraph (1) to have been without fault in connection with the overpayment, and no adjustment or recovery shall be made under the first sentence of such paragraph, unless the Secretary finds that the failure of such individual (and spouse if any) to report such value correctly and in a timely manner was knowing and willful.

(4) No action shall be taken by the Secretary to provide for the adjustment or recovery of any overpayment made with respect to an individual (whether such action is the initial action of the Secretary with respect to the overpayment or is subsequently taken) until the Secretary has sent to such individual a notice, in clear and understandable language, setting forth—

(A) the exact amount of the overpayment;

(B) the period or periods with respect to which the overpayment occurred;

(C) the reason why the overpayment occurred;

(D) a statement of the manner in which, and the rate at which, the overpayment is proposed to be adjusted or recovered;

(E) a statement of the individual's right to seek a waiver of the overpayment (or relief from the proposed manner or rate of adjustment or recovery) under the second sentence of paragraph (1) and to seek reconsideration of the Secretary's determination that an overpayment exists (or that the overpayment is to be adjusted or recovered in the proposed manner or at the proposed rate); and

(F) a statement that if the individual seeks such a waiver or reconsideration, no adjustment in or recovery from such individual's benefits will be undertaken or carried our until a decision is made on the waiver or reconsideration sought.

[(4)**]** *(5)* For payments for which adjustments are made by reason of a retroactive payment of benefits under title II, see section 1127.

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Applications and Furnishing of Information

(e)(1)(A) The Secretary shall, subject to subparagraph (B), prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this title.

(B) The requirements prescribed by the Secretary pursuant to subparagraph (A) shall require that eligibility for benefits under this title will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to

eligible individuals (or eligible spouses) and that the amounts of such benefits are correct.

For this purpose and for purposes of federally administered supplementary payments of the type described in section 1616(a) of this Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), the Secretary shall, as may be necessary, request and utilize information available pursuant to section 6103(l)(7) of the Internal Revenue Code of 1954, and any information which may be available for State systems under section 1137 of this Act, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(l)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1137.

(2) In case of the failure by any individual to submit a report of events and changes in circumstances relevant to eligibility for or amount of benefits under this title as required by the Secretary under paragraph (1), or delay by any individual in submitting a report as so required, the Secretary (in addition to taking any other action he may consider appropriate under paragraph (1)) shall reduce any benefits which may subsequently become payable to such individual under this title by—

(A) $25 in the case of the first such failure or delay,

(B) $50 in the case of the second such failure or delay, and

(C) $100 in the case of the third or a subsequent such failure or delay,

except where the individual was without fault or good cause for such failure or delay existed.

(3)(A) The Secretary shall take steps to assure (i) that all forms, notices, pamphlets, and other documents which are issued or distributed by the Secretary for use by applicants for or recipients of SSI benefits are written and arranged in a manner that is clear, readable, readily understandable, and suited to the needs and purposes of the particular documents involved, and (ii) that each such form, notice, pamphlet, or other document will fully and fairly provide the applicant or recipient with the information necessary to enable him or her to assess his or her rights and to know what if any action is required.

(B) In carrying out subparagraph (A), the Secretary shall—

(i) review all of the forms, notices, pamphlets, and other documents in use on the effective date of this paragraph, and complete whatever revisions or modifications may be necessary in order to achieve the objectives of such subparagraph, no later than 12 months after such date; and

(ii) review any form, notice, pamphlet, or other document (intended for use by applicants for or recipients of SSI benefits) which may be proposed for issuance or distribution on or after the effective date of this paragraph, prior to its actual issuance or distribution, in order to assure that it is written and arranged in the manner required by subparagraph (A).

(C) Except to the extent that it is affirmatively determined by the Secretary not to be feasible, the Secretary shall contract with recognized experts to conduct the reviews required by this paragraph and

to make any revisions in the documents involved which may be required to achieve the objectives of subparagraph (A).

* * * * * * *

REIMBURSEMENT TO STATES FOR INTERIM ASSISTANCE PAYMENTS

(g)(1) Notwithstanding subsection (d)(1) and subsection (b) as it relates to the payment of less than the correct amount of benefits, the Secretary may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a State (or a political subdivision thereof if agreed to by the Secretary and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished on behalf of the individual by the State (or political subdivision).

(2) For purposes of this subsection, the term "benefits" with respect to any individual means supplemental security income benefits under this title, and any State supplementary payments under section 1616 or under section 212 of Public Law 93-66 which the Secretary makes on behalf of a State (or political subdivision thereof), that the Secretary has determined to be due with respect to the individual [at the time the Secretary makes the first payment of benefits.] *at the time the Secretary makes the first payment of benefits (with respect to the period described in clause (A) of paragraph (3)) or at any time after the termination or suspension of the individual's benefits (with respect to a period described in clause (B) of such paragraph).* A cash advance made pursuant to subsection (a)(4)(A) shall not be considered as the first payment of benefits for purposes of the preceding sentence.

(3) For purposes of this subsection, the term "interim assistance" with respect to any individual means assistance financed from State or local funds and furnished for meeting basic needs *(A)* during the period, beginning with the month in which the individual filed an application for benefits (as defined in paragraph (2)), for which he was eligible for such benefits, *or (B) during any period following the termination or suspension of the individual's benefits, if and to the extent that (i) the individual is subsequently found to have been eligible for such benefits and (ii) a retroactive payment of benefits for months in that period is due the individual.*

* * * * * * *

Special Notice to Blind Individuals With Respect to Hearings and Other Official Actions

(j)(1) In any case where an individual who is applying for or receiving benefits under this title on the basis of blindness is entitled (under subsection (c) or otherwise) to receive notice from the Secretary of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this title, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, or (B) to receive the initial notice in the form or a certified letter.

(2) The elections described in paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this title on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each recertification of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this title until such time as it is revoked or changed.

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98TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
98-1049

TWO-YEAR EXTENSION OF EXCLUSION WITH RESPECT TO EDUCATIONAL ASSISTANCE PLANS

SEPTEMBER 24, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2568]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2568), to amend the Internal Revenue Code of 1954 to extend for two years the exclusion from gross income with respect to educational assistance programs, and for other purposes, having considered the same, report favorably thereon with amendments, and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. AMENDMENTS RELATING TO EDUCATIONAL ASSISTANCE PROGRAMS.

(a) 2-YEAR EXTENSION OF EXCLUSION FROM GROSS INCOME.—Subsection (d) of section 127 of the Internal Revenue Code of 1954 (relating to educational assistance programs) is amended by striking out "December 31, 1983" and inserting in lieu thereof "December 31, 1985".

(b) ANNUAL EXCLUSION LIMITED TO $5,000.—Subsection (a) of section 127 of such Code is amended to read as follows:

"(a) EXCLUSION FROM GROSS INCOME.—

"(1) IN GENERAL.—Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the em-

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ployee if the assistance is furnished pursuant to a program which is described in subsection (b).

"(2) $5,000 MAXIMUM EXCLUSION.—If, but for this paragraph, this section would exclude from gross income more than $5,000 of educational assistance furnished to an individual during a calendar year, this section shall apply only to the first $5,000 of such assistance so furnished."

(c) SPECIAL RULE FOR CERTAIN GRADUATE STUDENTS.—Subsection (c) of section 127 of such Code is amended by adding at the end thereof the following paragraph:

"(8) COORDINATION WITH SECTION 117(d).—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, section 117(d)(2) shall be applied as if it did not contain the phrase '(below the graduate level)'."

(d) REPORTING AND RECORDKEEPING REQUIREMENTS.—

(1) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after section 6039C the following new section:

"SEC. 6039D. RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS.

"(a) IN GENERAL.—Every employer maintaining a specified fringe benefit plan during any year beginning after December 31, 1984, for any portion of which the applicable exclusion applies, shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) with ret to such plan showing for such year—

"(1) the number of employees of the employer,

"(2) the number of employees of the employer eligible to participate under the plan,

"(3) the number of employees participating under the plan,

"(4) the total cost of the plan during the year, and

"(5) the name, address, and taxpayer identification number of the employer and the type of business in which the employer is engaged.

"(b) RECORDKEEPING REQUIREMENT.—Each employer maintaining a specified fringe benefit plan during any year shall keep such records as may be necessary for purposes of determining whether the requirements of the applicable exclusion are met.

"(c) ADDITIONAL INFORMATION WHEN REQUIRED BY THE SECRETARY.—Any employer—

"(1) who maintains a specified fringe benefit plan during any year for which a return is required under subsection (a), and

"(2) who is required by the Secretary to file an additional return for such year,

shall file such additional return. Such additional return shall be filed at such time and in such manner as the Secretary shall prescribe and shall contain such information as the Secretary shall prescribe.

"(d) DEFINITIONS.—For purposes of this section—

"(1) SPECIFIED FRINGE BENEFIT PLAN.—The term 'specified fringe benefit plan' means—

"(A) any cafeteria plan (as defined in section 125), and

"(B) any educational assistance program (as defined in section 127).

"(2) APPLICABLE EXCLUSION.—The term 'applicable exclusion' means—

"(A) section 125, in the case of a cafeteria plan, and

"(B) section 127, in the case of an educational assistance program."

(2) PENALTY.—Subsection (f) of section 6652 of such Code (relating to failure to file certain information returns, registration statements, etc.) is amended by striking out "125(h) (relating to information with respect to cafeteria plans)" and inserting in lieu thereof "6039D (relating to returns and records with respect to certain fringe benefit plans)".

(3) CONFORMING AMENDMENTS.—

(A) Section 125 of such Code (relating to cafeteria plans) is amended by striking out subsection (h) and inserting in lieu thereof the following:

"(h) CROSS REFERENCE.—

"For reporting and recordkeeping requirements, see section 6039D."

(B) Section 127 of such Code is amended by adding at the end thereof the following new subsection:

"(e) CROSS REFERENCE.—

"For reporting and recordkeeping requirements, see section 6039D."

(4) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6039C the following new item:

"Sec. 6039D. Returns and records with respect to certain fringe benefit plans."

(e) CLARIFICATION OF DISALLOWANCE OF CREDIT OR DEDUCTION.—Paragraph (7) of section 127(c) of such Code (relating to definitions; special rules) is amended by inserting "to the employee" after "allowed".

(f) EXCLUSION FROM RAILROAD RETIREMENT TAXES OF AMOUNTS WHICH MAY BE EXCLUDED UNDER SECTION 127.—Subsection (e) of section 3231 of such Code (defining compensation for purposes of the railroad retirement taxes) is amended by adding at the end thereof the following new paragraph:

"(6) The term 'compensation' shall not include any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127."

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1983.

(2) SUBSECTION (d).—The amendments made by subsection (d) shall take effect on January 1, 1985.

(3) SUBSECTION (f).—The amendment made by subsection (f) shall apply to remuneration paid after December 31, 1984.

(4) NO PENALTIES OR INTEREST ON FAILURE TO WITHHOLD.—No penalty or interest shall be imposed on any failure to withhold under subtitle C of the Internal Revenue Code of 1954 (relating to employment taxes) with respect to amounts excluded from gross income under section 127 of such Code (as amended by this section and determined without regard to subsection (a)(2) thereof) with respect to periods during 1984.

(5) COORDINATION WITH SECTION 117(d).—In the case of education described in section 127(c)(8) of the Internal Revenue Code of 1954, as added by this section, section 117(d) of such Code shall be treated as in effect on and after January 1, 1984.

(h) STUDY.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a study on the effect of the provisions of section 127 of the Internal Revenue Code of 1954.

(2) REPORT.—Not later than October 1, 1985, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study conducted under paragraph (1) (together with such recommendations as he may deem advisable).

Amend the title so as to read: "A bill to amend the Internal Revenue Code of 1954 to extend for 2 years the exclusion from gross income with respect to educational assistance programs, and for other purposes."

I. SUMMARY

Under present law, amounts paid by an employer for employee educational benefits generally are includible in the employee's gross income for income and employment tax purposes. However, an employer is not required to report amounts paid for employee educational benefits if the amounts are deductible by the employee as an employee business expense. Amounts expended for education qualify as deductible employee business expenses if the education (1) maintains or improves skills required for the employee's job or (2) meets the express requirements of the individual's employer imposed as a condition of employment.

A provision of the Code (sec. 127), which excluded from gross income for income and employment tax purposes amounts paid or expenses incurred by an employer for educational assistance provided to an employee under a plan that met certain requirements, expired for taxable years beginning after December 31, 1983. The exclusion applied without regard to whether the amounts provided to an employee qualified as an employee business expense.

The bill extends the exclusion for employee educational assistance for two years through 1985, subject to an overall annual limit of $5,000 of excludable educational assistance benefits per employee. The bill waives penalties and interest for failure to withhold during 1984. In addition, the bill requires an employer with an educational assistance program to provide an annual information return on the plan to the Internal Revenue Service, and requires the Treasury Department to provide the tax-writing committees of the Congress with a study on the effect of the exclusion.

II. EXPLANATION OF THE BILL

Present and Prior Law

General rule

Under present law, amounts paid by an employer for employee educational benefits generally are includible in the employee's gross income for income and employment tax purposes. However, an employer is not required to report amounts paid for employee educational benefits if the amounts are deductible by the employee as an employee business expense. Amounts expended for education qualify as deductible employee business expenses if the education (1) maintains or improves skills required for the employee's job or (2) meets the express requirements of the indivdual's employer imposed as a condition of employment.

A provision of the Code (sec. 127), which exclude from gross income for income and employment tax purposes amounts paid or expenses incurred by an employer for educational assistance provided to an employee under a written plan that met certain requirements and was for the exclusive benefit of the employees, expired for taxable years beginning after December 31, 1983. The exclusion applied without regard to whether the amounts provided to an employee qualified as an employee business expense.

Excludable benefits under educational assistance programs

Under an educational assistance program, an employee could exclude from income the value of educational assistance provided by the employer to the employee. Excludable amounts included tuition, fees, and similar expenses, as well as the cost of books, supplies, and equipment paid for, or provided by, the employer. (The exclusion was not available for the cost of tools or supplies provided by the employer if the employer could retain such tools or supplies after completion of the course of instruction.) However, meals, lodging, or transportation could not be excluded under the provision. The exclusion did not apply to educational assistance furnished for courses involving sports, games, or hobbies, unless the education provided involved the business of the employer.

For a program to qualify as an educational assistance program, the employee could not be permitted to choose taxable benefits in lieu of educational assistance benefits. In administering this rule, the business practices of an employer, as well as the written program, were taken into account. A qualified educational assistance program was not required to be funded or approved in advance by the Internal Revenue Service.

The employee was not entitled to claim a deduction (e.g., a business expense deduction) or a credit with respect to any amount that was excluded from income under the provision.

Nondiscrimination requirements

For the exclusion to be available, the educational asssitance program also was required to meet certain requirements with respect to nondiscrimination in eligibility.

The program was required to benefit employees who qualified under a classification set up by the employer and found by the Internal Revenue Service not to be discriminatory in favor of employees who are officers, owners, highly compensated individuals, or their dependents. The program had to be available to a broad class of employees, rather than to a particular individual. However, employees could be excluded from a program if they were members of a collective bargaining unit and there was evidence that educational assistance benefits were the subject of good faith bargaining between the unit representatives and the employer or employers offering the program.

A program was not considered discriminatory merely because it was utilized to a greater degree by one class of employees rather than by another class or because successful completion of a course, or attaining a particular course grade, was required for, or considered in, determining reimbursement under the program.

The exclusion did not apply if the share of benefits received by certain employees under the program exceeded a specific level. Specifically, the benefits were not excludable if more than five percent of the benefits were paid to shareholders or owners (or their spouses or dependents who were employees), each of whom (on any day of the year) owned more than five percent of the stock or of the capital or profits interest in the employer.[1]

Reasonable notification of the availability and terms of the program had to be provided to eligible employees.

Treatment of self-employed individuals

An individual who qualified as an employee within the definition of section 401(c)(1) also was an employee for purposes of these provisions. Thus, in general, the term employee included self-employed individuals who had earned income for the taxable year, or any prior taxable year, as well as individuals who would have had earned income except that their trades or businesses did not have net profits for the taxable year.

An individual who owned the entire interest in an unincorporated trade or business was treated as his or her employer. A partnership was considered the employer of each partner who was also an employee of the partnership.

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[1] For determining stock ownership in corporations, the provision used the attribution rules provided under subsection (d) and (e) of section 1563 (without regard to sec. 1563(3)(3)(C)). Ownership interests in unincorporated trades or businesses were to be determined, under regulations, on the basis of similar principles.

Reasons for Change

The committee recognizes that although the educational assistance exclusion was enacted in 1978 for only a temporary period in order to provide the Congress with an opportunity to evaluate the exclusion, the absence of any information reporting requirements has made it difficult to obtain information concerning the operation of these educational assistance programs. The committee believes that it is appropriate to extend the exclusion for two additional years and to adopt an annual information return requirement, so that the Treasury Department and Internal Revenue Service will have data relating to the use and effectiveness of the exclusion. The bill directs the Treasury Department to undertake a study of all relevant information relating to the educational assistance exclusion and to make a report to the Congress by October 1, 1985. The committee anticipates that a comprehensive examination of the effects of excluding this and other statutory fringe benefits from the income, wage, and benefit bases will be necessary next year.

In addition, the committee is concerned that the unlimited exclusion for educational assistance benefits may allow excessive growth in the cost of this exclusion. Therefore, the committee believes that it is appropriate to impose a dollar cap on the amount of educational assistance benefits that an employee may annually exclude from gross income for income and employment tax purposes.

Explanation of Provisions

Extension of exclusion

The bill provides that the section 127 educational assistance exclusion is to expire for taxable years beginning after December 31, 1985. Thus, the exclusion is extended for two additional years—1984 and 1985. In addition, the bill waives penalties and interest for failures to withholding during 1984.

Dollar cap on excludable benefits

Under the bill, the maximum amount of educational assistance benefits that an employee can receive tax-free during any taxable year is limited to $5,000 so that the excess of benefits over this amount is subject to income and employment taxes. In the case of an employee who works for more than one employer, the $5,000 cap applies to the aggregate amount of educational assistance benefits received from all employers.

For purposes of this $5,000 limit, the employee is to take into account all reimbursements received from employers for educational assistance, as well as the fair market value of all educational assistance paid or provided directly by the employer.

Amounts expended for education that may be deducted by the employee as an employee business expense are not subject to the $5,000 cap on educational assistance benefits and are not counted in determining whether other educational benefits received during the year exceed the cap.

The committee recognizes that an employee cannot avoid the $5,000 limit by electing to forego receipt of reimbursements to an-

other taxable year because the employee is in constructive receipt of the amounts in the current year. In addition, the committee intends that employers will report to an employee, who separates from service with the employer during the taxable year, the value of the educational assistance benefits received by the employee during the year.

Reporting requirements

The bill requires any employer maintaining a section 127 educational assistance plan during any year year to file an information return with respect to the program at the time and in the manner required by Treasury regulations. The return must show (1) the number of employees of the employer, (2) the number of employees eligible to participate in the program, (3) the number of employees participating under the program, (4) the total cost of the plan during the year, and (5) the name, address, and taxpayer identification number of the employer and the type of business in which the employer is engaged.[2]

Under the bill, each employer maintaining an educational assistance program during any year is to keep records that may be necessary in order to determine whether the plan meets the requirements of section 127.

The bill provides that the Secretary may require employers to file an additional return for any year in addition to the information return. The additional return is to be filed at such time and in such manner as the Secretary may prescribe and is to contain such information as the Secretary may require.

The penalty for failure to file the returns required by the bill is the same penalty that generally applies to failures to file certain information returns. Of course, no return is required for any portion of any year during which the provision excluding educational assistance benefits is not in effect.

Treasury study

Under the bill, the Treasury Department is required to conduct a study of the effect of the provisions of section 127. The study is to address such issues as the number of employees benefiting from the exclusion, the income levels of those employees, the types of employers providing such plans, and the effectiveness of the provision in increasing employee productivity. A copy of the report must be submitted to the Committee on Ways and Means and the Committee on Finance not later than October 1, 1985, and is to contain any recommendations with respect to section 127 that the Treasury deems advisable.

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[2] For purposes of this reporting requirement, the costs to the employer of the benefits include all out-of-pocket expenses and, in the case of an employer in-house training program, all costs of the employer directly allocable to the program. Overhead expenses, such as utilities or copying costs, are not to be considered costs directly allocable to the program for this reporting purpose; however, the costs of hiring instructors for the in-house program or of purchasing books and supplies are to be considered as directly allocable to the program.

Exclusion from railroad retirement taxes

The bill provides that the educational assistance exclusion applies to the wage base for purposes of the railroad retirement taxes.

Graduate students employed by educational institutions

Under the bill, the exclusion from gross income for income and employment taxes for qualified tuition reductions (sec. 117(d)) is extended to apply to education furnished to graduate students who are employees of certain educational institutions and who perform teaching or research activities for the educational institution.

Effective Dates

The provisions of the bill generally are effective for taxable years beginning after December 31, 1983. The reporting and recordkeeping requirements are effective on January 1, 1985. The provision relating to railroad retirement taxes applies with respect to remuneration paid after December 31, 1984.

III. BUDGET EFFECTS OF THE BILL AND VOTE OF THE COMMITTEE

A. Budget Effects

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made about the effect of the budget of the provisions of H.R. 2568 as reported by the committee.

The following table provides estimates of the income tax and social security tax effects of the bill as amended for fiscal years 1985–1989.

[Fiscal years; millions of dollars]

	1985	1986	1987	1988	1989
Income tax	−108	−23			
Social security	−47	−8			
Total	−155	−31			

Note: The Treasury Department agrees with this statement.

B. Vote of the Committee

In compliance with clause 3(l)(2)(B) of Rule XI of the rules of the House of Representatives, the following statement is made about the vote of the committee on the motion to report H.R. 2568 as amended. The bill, as amended by the committee, was ordered favorably reported by voice vote.

IV. OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clauses 2(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to the committee action on H.R. 2568, as amended.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was a result of the committee's review of expiring tax provisions (in this case, regarding the tax-exempt status of employee educational assistance plans under section 127 of the Code, which expired at the end of 1983, and which was previously considered by the conference committee on a Senate amendment to H.R. 4170) that the committee concluded that it is appropriate to extend the section 127 exclusion with certain modifications for 1984 and 1985. This will allow the committee additional time to review the provision.

The Subcommittee on Select Revenue Measures held a hearing on the bill as introduced on November 3, 1983, and approved the bill with amendments on November 10, 1983. (As introduced the bill would have repealed the expiration date for the section 127 exclusion.) The full committee considered the bill on September 19, 1984, and ordered it favorably reported with an amendment in the nature of a substitute for the bill as introduced.

Tax Expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made by the bill as reported involve an extension of a prior tax expenditures of $108 million in fiscal year 1985 and $23 million in fiscal year 1986.

New Budget Authority

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made by the bill as reported involve no new budget authority.

Congressional Budget Office Estimates

With respect to subdivision (C) of clause 2(l)(3), the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated in Part III of this report) and agrees with the budget estimates. The Director submitted the following statement.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 20, 1984.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has examined H.R. 2568, a bill to extend the exclusion for amounts received under certain educational assistance programs and for other purposes. As amended by the committee, the bill would extend two years (until December 31, 1985) the exclusion for certain employer-provided educational assistance programs, subject to a cap of $5,000 per employee per year. The bill would also require employers to provide an annual information report and the Department of the Treasury to submit a study of the effect of the exclusion to the tax-writing committees.

The CBO has reviewed and concurs with estimates of the bill's revenue effect prepared by the staff at the Joint Committee on Taxation. The bill would reduce fiscal year revenues by $155 million in 1985 and $31 million in 1986, and would increase fiscal year tax expenditures by $108 million in 1985 and $23 million in 1986. The bill would not affect budget outlays.

With best wishes.

Sincerely,

RUDOLPH G. PENNER, *Director.*

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the Committee on Government Operations regarding the subject matter of the bill.

Inflationary Impact

In compliance with clause 2(l)(4), the committee states that the enactment of the bill, H.R. 2568 as amended, is not expected to have any inflationary impact on prices and costs in the operation of the national economy.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

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PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

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SEC. 125. CAFETERIA PLANS.

(a) IN GENERAL—* * *

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[(h) REPORTING REQUIREMENTS.—

[(1) IN GENERAL.—Each employer maintaining a cafeteria plan during any year which begins after December 31, 1984, and to which this section applies shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) with respect to such plan showing for such year—

[(A) the number of employees of the employer,

[(B) the number of employees participating under the plan,

[(C) the total cost of the plan during the year, and

[(D) the name, address, and taxpayer identification number of the employer and the type of business in which the employer is engaged.

[(2) RECORDKEEPING REQUIREMENT.—Each employer maintaining a cafeteria plan during any year shall keep such records as may be necessary for purposes of determing whether the requirements of this section are met.

[(3) ADDITIONAL INFORMATION WHEN REQUIRED BY THE SECRETARY.—Any employer—

[(A) who maintains a cafeteria plan during any year for which a return is required under paragraph (1), and

(B) who is required by the Secretary to file an additional return for such year,

shall file such additional return. Such additional return shall be filed at such time and in such manner as the Secretary shall prescribe and shall contain such information as the Secretary shall prescribe.]

(h) CROSS REFERENCE.—

For reporting and recordkeeping requirements, see section 6039D.

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SEC. 127. EDUCATIONAL ASSISTANCE PROGRAMS.

[§(a) GENERAL RULE.—Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in subsection (b).]

(a) EXCLUSION FROM GROSS INCOME.—

(1) IN GENERAL.—Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in subsection (b).

(2) $5,000 MAXIMUM EXCLUSION.—If, but for this paragraph, this section would exclude from gross income more than $5,000 of educational assistance furnished to an individual during a calendar year, this section shall apply only to the first $5,000 of such assistance so furnished.

(b) EDUCATIONAL ASSISTANCE PROGRAM.—

(1) IN GENERAL.—For purposes of this section an educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet the requirements of paragraphs (2) through (6) of this subsection.

(2) ELIGIBILITY.—the program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are officers, owners, or highly compensated, or their dependents. For purposes of this paragraph there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representative and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) PRINCIPAL SHAREHOLDERS OR OWNERS.—Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) OTHER BENEFITS AS AN ALTERNATIVE.—A program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income. For purposes of this section, the business practices of the employer (as well as the written program) will be taken into account.

(5) NO FUNDING REQUIRED.—A program referred to in paragraph (1) is not required to be funded.

(6) NOTIFICATION OF EMPLOYEES.—Reasonable notification of the availability and terms of the program must be provided to eligible employees.

(c) DEFINITIONS; SPECIAL RULES.—For purposes of this section—

(1) EDUCATIONAL ASSISTANCE.—The term "educational assistance" means—

(A) the payment, by an employer, of expenses incurred by or on behalf of an employee for education of the employee (including, but not limited to, tuition, fees, and similar payments, books, supplies, and equipment), and

(B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment),

but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation. The term "educational assistance" also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies.

(2) EMPLOYEE.—The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(3) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (2).

(4) ATTRIBUTION RULES.—

(A) OWNERSHIP OF STOCK.—Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) INTEREST IN UNINCORPORATED TRADE OR BUSINESS.—The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(5) CERTAIN TESTS NOT APPLICABLE.—An educational assistance program shall not be held or considered to fail to meet any requirements of subsection (b) merely because—

(A) of utilization rates for the different types of educational assistance made available under the program; or

(B) successful completion, or attaining a particular course grade, is required for or considered in determining reimbursement under the program.

(6) RELATIONSHIP TO CURRENT LAW.—This section shall not be construed to affect the deduction of inclusion in income of amounts (not within the exclusion under this section) which are paid or incurred or received as reimbursement, for educational expenses under section 117, 162 or 212.

(7) DISALLOWANCE OF EXCLUDED AMOUNTS AS CREDIT OR DEDUCTION.—No deduction or credit shall be allowed *to the employee* under any other section of this chapter for any amount excluded from income by reason of this section.

(8) COORDINATION WITH SECTION 117(d).- In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, section 117(d)(2) shall be applied as if it did not contain the phrase "(below the graduate level)".

(d) TERMINATION.—This section shall not apply to taxable years beginning after December 31, [1983.] *1985.*

(e) CROSS REFERENCE.—

For reporting and recordkeeping requirements, see section 6039D.

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Subtitle C—Employment Taxes and Collection of Income Tax at Source

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CHAPTER 22—RAILROAD RETIREMENT TAX ACT

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Subchapter D—General Provisions

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SEC. 3231. DEFINITIONS.

(a) EMPLOYER.— * * *

* * * * * * *

(e) COMPENSATION.—For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers. Such terms does not include (i) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an

employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability, (ii) tips (except as is provided under paragraph (3)), or (iii) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the spearate amounts where both wages and expense reimbursement or allowance are combined in a single payment. Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $25. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a0 of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(2) APPLICATION OF CONTRIBUTION BASES.—

(A) COMPENSATION IN EXCESS OF APPLICABLE BASE EXCLUDED.—

(i) IN GENERAL.—The term "compensation" does not include that part of remuneration paid during any calendar year to an individual by an employer after remuneration equal to the applicable base has been paid during such calendar year to such individual by such employer for services rendered as an employee to such employer.

(ii) REMUNERATION NOT TREATED AS COMPENSATION EXCLUDED.—There shall not be taken into account under clause (i) remuneration which (without regard to clause (i)) is not treated as compensation under this subsection.

(B) APPLICABLE BASE.—

(i) TIER 1 TAXES.—Except as provided in clause (ii), the term "applicable base" means for any calendar year the contribution and benefit base determined

under section 230 of the Social Security Act for such calendar year.

(ii) TIER 2 TAXES, ETC.—For purposes of—

(I) the taxes imposed by sections 3201(b), 3211(a)(2), and 3221(b), and

(II) computing average monthly compensation under section 3(j) of the Railroad Retirement Act of 1974 (except with respect to annuity amounts determined under subsection (a) or (f)(3) of section 3 of such Act),

clause (2) of the first sentence, and the second sentence, of subsection (c) of section 230 of the Social Security Act shall be disregarded.

(C) SUCCESSOR EMPLOYERS.—For purposes of this paragraph, the second sentence of section 312(a)(1) (relating to successor employers) shall apply, except that—

(i) the term "services" shall be substituted for "employment" each place it appears,

(ii) the term "compensation" shall be substituted for "remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection)" each place it appears, and

(iii) the terms "employer", "services", and "compensation" shall have the meanings given such terms by this section.

(3) Solely for purposes of the taxes imposed by section 3201 and other provisions of this chapter insofar as they relate to such taxes, the term "compensation" also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(4)(A) For purposes of applying sections 3201(a), 3211(a)(1), and 3221(a), in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, clause (i) of the second sentence of paragraph (1) shall exclude from the term "compensation" only—

(i) payments which are received under a workmen's compensation law, and

(ii) benefits received under the Railroad Retirement Act of 1974.

(B) Notwithstanding any other provision of law, for purposes of the sections specified in subparagraph (A), the term "compensation" shall include benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness, except to the extent that such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

(C) Under regulations prescribed by the Secretary, subparagraphs (A) and (B) shall not apply to payments made after the expiration of a 6-month period comparable to the 6-month period described in section 312(a)(4).

(D) Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in compensation solely by reason of subparagraph (A) or (B)

shall be treated for purposes of this chapter as the employer with respect to such compensation.

(5) The term "compensation" shall not include any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

(6) The term "compensation" shall not include any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

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Subpart A—Information Concerning Persons Subject to Special Provisions

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Sec. 6039D. Returns and records with respect to certain fringe benefit plans.

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SEC. 6039D. RETURNS AND RECORDS WITH RESPECT TO CERTAIN FRINGE BENEFIT PLANS.

(a) IN GENERAL.—Every employer maintaining a specified fringe benefit plan during any year beginning after December 31, 1984, for any portion of which the applicable exclusion applies, shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) with respect to such plan showing for such year—

(1) the number of employees of the employer,

(2) the number of employees of the employer eligible to participate under the plan,

(3) the number of employees participating under the plan,

(4) the cost cost of the plan during the year, and

(5) the name, address, and taxpayer identification number of the employer and the type of business in which the employer is engaged.

(b) RECORDKEEPING REQUIREMENT.—Each employer maintaining a specified fringe benefit plan during any year shall deep such records as may be necessary for purposes of determining whether the requirements of the applicable exclusion are met.

(c) ADDITIONAL INFORMATION WHEN REQUIRED BY THE SECRETARY.—Any employer—

(1) who maintains a specified fringe benefit plan during any year for which a return is required under subsection (a), and

(2) who is required by the Secretary to file an additional return for such year,

shall file such additional return. Such additional return shall be filed at such time and in such manner as the Secretary shall prescribe and shall contain such information as the Secretary shall prescribe.

(d) DEFINITIONS.—For purposes of this section—

(1) SPECIFIED FRINGE BENEFIT PLAN.—The term "specified fringe benefit plan" means—

(A) any cafeteria plan (as defined in section 125), and

(B) any educational assistance program (as defined in section 127).

(2) APPLICABLE EXCLUSION.—The term "applicable exclusion" means—

(A) section 125, in the case of a cafeteria plan, and

(B) section 127, in the case of an educational assistance program.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter A—Additions to the Tax and Additional Amounts

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SEC. 6652. FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENTS, ETC.

(a) RETURNS RELATING TO INFORMATION AT SOURCE, PAYMENTS OF DIVIDENDS, ETC., AND CERTAIN TRANSFERS OF STOCK.—

(1) IN GENERAL.—* * *

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(f) INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION; ETC.—In the case of failure to file a return or statement required under section 6058 (relating to information required in connection with certain plans of deferred compensation), 6047 (relating to information relating to certain trusts and annuity and bond purchase [sic] plans), or [125(h) (relating to information with respect to cafeteria plans)] *6039D (relating to returns and records with respect to certain fringe benefit plans)* on the

date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is to due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing so to file, $25 for each day during which such failure continues, but the total amount imposed under this subsection on any person for failure to file any return shall not exceed $15,000.

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VI. ADDITIONAL VIEWS OF HON. J. J. PICKLE

In the past decade, tax exempt employee benefits have grown at a phenomenal rate. It becomes a matter of great public importance if government allows a continued large growth in employee benefits which permits a business to deduct, as a business expense, certain salary costs, and in turn allows the employee to avoid payment of tax on the benefits. While a great deal of good comes from these employee benefits, there is also an erosion of the federal tax bases. Businesses and employees can't always have it both ways—without Uncle Sam being the loser. I think the Congress should make an earnest effort to find the proper balance in the tax treatment of employee benefits programs.

I support enactment of H.R. 2568 which provides an extension of the exemption, through 1985, from income and employment taxes for educational assistance programs. However, I expect a thorough review of this provision in 1985 and I do not believe that educational assistance benefits should also be exempt from employment taxes, as has been provided in this bill. These benefits should be subject to the employment taxes.

I make these statements not because I am opposed to fringe benefits or seek to eliminate the educational assistance program. Rather, there are strong arguments which lead me to the conclusion that educational assistance can be encouraged without also eroding a worker's social security coverage.

Those who oppose the imposition of employment taxes on educational assistance make three arguments; all without foundation. These arguments are:

(1) The social security and income tax bases should be identical;

(2) The imposition of FICA taxes on educational assistance will kill these programs;

(3) The imposition of FICA taxes will bear most heavily on those who can least afford to pay them.

There is no compelling reason to have identical wage bases for social security and income tax purposes. In fact, the two wage bases have always been dissimilar and the 1983 Social Security Amendments specifically stated that Congress does not want to require completely identical wage bases.

The income tax and the social security tax have very different purposes. The income tax is designed solely to raise revenue; the social security program is a social insurance program which replaces a worker's income if he should die, retire or become disabled. FICA taxes are imposed solely to finance those insurance benefits.

Given the different purposes of the social security program, why should workers be forced to choose between educational assistance and future social security benefits?

Taxing the benefits for FICA purposes does not discriminate against low-income workers, who can least afford to pay the tax. The group which should most concern Congress is the dependents or suvivors of workers. This it the group for whom social security is designed to provide lost income in the form of social security benefits and who receive permanently reduced benefits as a result of the FICA tax exclusion which the worker chose at an earlier point.

If a worker excludes even a small portion of his wages, his benefit (and that of his dependents or survivors) can be drastically affected. For example, if a 25 year old male with average earnings and two children who receives $3,000 of educational assistance from his employer for four years and dies at age 26 the social security benefits which his survivors receive will be significantly affected by whether or not he paid FICA taxes on his educational assistance.

The worker who receives the fringe benefit tax free saves $840 in FICA taxes over the 4 years ($210 per year), and receives no additional social security benefits for the amount of educational assistance.

The worker who receives the fringe benefit as taxable compensation pays $840 in increased FICA taxes but his survivors receive $37,000 in increased social security benefits as a result of having the $3,000 per year added to his social security benefit base.

While it is true that not all workers would be affected in this manner, such an experience is neither extreme, nor uncommon. It is because of just this kind of tragedy that survivors benefits are part of our social security insurance program.

Taxing these fringe benefits for FICA will not "kill" these programs. In the 1983 Social Security Amendments, Section 401(k) plans were taxed for FICA purposes and the program has continued to grow dramatically.

If Congress wants to encourage these benefits, there's more than enough incentive provide through the income tax exclusion.

Before concluding, let me put this bill in a broader perspective. On September 17 and 18, 1984, the Subcommittees of Social Security and Select Revenue Measures head hearings on the distribution and economics of statutory fringe benefits. We were presented with some rather alarming statistics. Between 1950 and 1984, employer-sponsored fringe benefits receiving tax-favored treatment increased from 2.6 to 10.4 percent of total compensation. The Social Security Trustees project that the ratio of benefits to total compensation will increase by 0.3 percent annually. According to SSA's Chief Actuary, by the year 2060, fringe benefits will represent some 34 percent of total compensation. It is clear that the projected growth of tax-favored fringe benefits will continue to erode both the income and payroll tax bases and raise the long-run costs of the social security program.

Educational assistance benefits are admittedly only a small portion of the problem. However, if we are unable to make the difficult decisions on these minor benefits, how will we respond to the more intense pressure exerted when all fringe benefits come under scrutiny next year? By refusing to impose FICA taxes on educational assistance benefits now, we are sending a signal to employers and employees everywhere to proceed full steam ahead with their

plans to offer more tax-favored benefits to their employees in place of taxable compensation. We should be honest with ourselves and ask whether we can afford this growing drain on Federal revenues at this time?

In conclusion, I would note again that the tax exemptions in this legislation are extended only until December 31, 1985. During the coming year, I will continue to study the impact of this tax policy and I expect that the Subcommittee on Social Security will hold further hearings in this area.

As we proceed with this review, we must ask ourselves why should there be a social security tax exclusion to encourage the use of a fringe benefit, which has nothing to do with the purposes of the social security program, when there is sufficient incentive through the income tax exclusion, and when this exclusion forces workers to choose between that benefit and future social security benefits?

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